IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3624 of 1983
with
SPECIAL CIVIL APPLICATION No.4047 of 1983
and
SPECIAL CIVIL APPLICATION No.5929 of 1983
and
SPECIAL CIVIL APPLICATION No.6562 of 1984
and
SPECIAL CIVIL APPLICATION No.1879 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

INSTRUCTED BY
MR.MOTWANI, THE THEN ASSTT. SECY. TO THE HON'BLE CJ
TO FEED INTO THE COMPUTER.

T O C O M P A R E
WITH THE ORIGINAL SCRIPT
BEFORE ISSUANCE OF WRIT.

TRANSFERRED TO COMMONPOOL UNCOMPARED
AS INSTRUCTED BY MR.PARAMESHWARAN,
ASSTT. SECY TO THE HON'BLE CJ.
-- P.S.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

ORIENTAL FIRE AND GENERAL INSURANCE CO. LTD

Versus

RANA KIRITSINH JATUBHABHAI

Appearance:
Mr. Ajay Mehta for Mr. R.H. Mehta for the petitioner in all the Special Civil Applications.

In Special Civil Application No.3624 of 1983.
Mr. Mehul S. Shah for the respondents nos.1 and 2.
Mr. Gaurang H. Bhatt for the respondents nos.3 to 5.

In Special Civil Application No.4047 of 1983.
Mr. D.M. Thakkar for the respondents.

In Special Civil Application No.5929 of 1983
Mr.A.J. Patel for the respondents nos.1 and 2.

In Special Civil Application No.6562 of 1984.
Mr. T.V. Shah for the respondent no.1.
Mr.D.M. Thakkar for the respondent no.2.
In Special Civil Application No.1879 of 1988.
Mr. P.R. Nanavati for the respondent no.1.
Mr. H.J. Nanavati for the respondent no.2.

CORAM : MR.JUSTICE S.K.KESHOTE
Date of decision: 16/08/96

COMMON ORAL JUDGEMENT :

As substantially same issue has been raised in these petitions by the counsel for the petitioners and as such these petitions are being disposed of by this common judgment.

Special Civil Application No.3624 of 1983.
2. The respondents nos.1 and 2, herein are the sons of late Jatubha Chakubha Rana who was serving with the respondents nos.3 to 5 as helper for distribution of L.P. Gas Cylinders at their godown at Surendranagar. The respondents nos.3 to 5 are the distributors of the Indane Gas at Surendranagar. On 16.12.1981, late Jathubha was on duty at the godown of the respondents nos.3 to 5. Some unknown persons who may have come to commit theft of LP Gas Cylinders have been challenged by the deceased. Those persons have inflicted injury to the deceased father of the respondents nos.1 and 2, which resulted in his death. Those persons had also committed theft of eight LP Gas cylinders. As the death of the father of the respondents nos.1 and 2 had been in accident arisen

out of and in course of employment as workman with the respondents nos.3 to 5, the respondents nos.1 and 2 have filed an application for compensation of Rs.30,000/- in the court of Civil Judge (SD) and Ex Officio Commissioner for Workmen's Compensation, Surendranagar.

In the claim application, the petitioner was originally not impleaded as party. The respondents nos.3 to 5 have taken the defence that the petitioner is liable to pay amount of compensation claimed by the respondents nos.1 and 2 in the case. on this plea of these respondents the Court summoned the petitioner in the proceedings and the petitioner filed its reply at Exhibit No.21. The defences taken by the petitioner in its reply in the proceedings are as follows,

(i) the deceased was not the workman of the respondents nos.3 to 5;

(ii) the death of the father of the claimants was not caused in an accident arising out of and in course employment as workman the respondents nos.3 to 5;

(iii) as per the terms of the insurance policy, the coverage was given to two clerical employees and eight employees engaged in the distribution of LP Gas cylinders and deceased was not covered under the said policy because he was a watchman and therefore, the company is not liable to pay any compensation for his death.

The learned court below framed many issues in the case but it appears that the petitioner did not press for framing of any issue on the pleas taken by it in its reply.

The learned court below under its award dated 14.12.1982 awarded Rs.18,000/- as a compensation to the respondents nos.1 and 2 with interest thereon @ 6 % p.a. from 17.12.81 till the date of realisation of the amount, and Rs.150/- as costs of the application. It has further been ordered that if this amount of compensation costs and interest is realised from the opponents, it shall have a right of being reimbursed to this extent by the Oriental Fire and General Insurance Co. Ltd. with which the employees of the opponents were insured.

The claim application of the respondents nos.1 and 2 has been decided by the court on 14.12.1982. The petitioner filed this writ petition before this court on

15.3.1983. In this petition, the order has also been challenged of the court dated 14.10.1983 under which the Collector was directed to realise this amount from the Insurance Company.

Special Civil Application No.4047 of 1983.

3. The case of the respondent no.1, who was the applicant before the Civil Judge (SD) and Ex Officio Commissioner for Workmen's Compensation, Amreli, was that he was serving in Kishor Oil Mills, Amreli on daily wages. The respondent no.2 herein is the owner of the said Mill. On 18.8.1982 when he was working in the Mill of the respondent no.2 at night his left leg got into groundnut seeds expeller and thereby he received injuries on his left ankle and there was a fracture and bone had come out. As the respondent no.1 sustained these injuries in an accident arising out of and in course of employment he prayed for compensation of Rs.14,500/- and Rs.1000/- as expenses incurred after treatment, in the application filed before the lower court. In the claim application the respondent no.1 impleaded both the owner and the Insurance company, the petitioner herein, as opponents. Both the respondent no.2 and the petitioner contested the claim of the applicant- respondent no.1. The petitioner has taken defences.

(i) it is not necessary party to the application;

(ii) it has contractual liability and not statutory;

(iii) there is no privity of contact between the company and workman;

(iv) the company is not liable for the interest, penalty and costs as no information of claim or claim papers were supplied in time.

The court below framed many issues in the case but it appears that the petitioner did not press for framing of any issue on the pleas taken by it in its reply.

The court found that the respondent no.1, the applicant therein, has sustained the injuries in an accident arising out of and in course of the employment which resulted in partial disablement to the extent of 50%. The court has assessed Rs.14,900/- as the amount of compensation to be granted to him. Order of payment of the amount of compensation has been made against both the

respondent no.2 and the petitioner. No award of interest, penalty or costs is made in this case by the court.

There is no dispute in this case that the respondent no.2 has taken the policy of Workmen's Compensation Act, 1923 in respect of all of its employees.

The court below made award in this case on 19.2.1983. It is significant to mention here that the petitioner has not put appearance in final arguments. It also does not appear from the award of the court below that the petitioner has produced any evidence in support of its defence.

This petition is filed by the petitioner before this court on 13.6.1983.

Special Civil Application No.5929 of 1984.

4. The respondents nos.1 and 2 herein were the applicants before the Civil Judge (SD) and Ex Officio Commissioner for Workmen's Compensation at Godhra. The respondents nos.1 and 2 are the parent of late Shri Girish Kumar Annakutta Nair, workman who died in an accident arising out of and in course of employment on 31.12.80 at the premises of the respondent no.4. The deceased workman was serving as Mistri with the respondent no.3 on the monthly salary of Rs.900/-. The respondent no.3 had taken a contract of erecting of factory building of the respondent no.4. The respondent no.4 had got the person employed in the construction insured with the petitioner. The wall of the factory fell down and the deceased was crushed under the said wall and died immediately. The respondents nos.1 and 2 filed an application for compensation under the provisions of the Workmen's Compensation Act, 1923 and Rs.30,000-00 claimed therein. In the claim application, the claimants have impleaded the principal employer, contractor and insurance company as parties.

The principal employer did not contest the claim application. The contractor, the employer though filed reply to the claim application but did not dispute the claimant's claim. The contractor stated that the insurance policy was taken by the principal employer for the workmen who worked in construction of factory building and as such, the liability is of the insurance company of payment of the compensation to the dependents of deceased employee.

The Insurance company has filed the reply to the claim petition and has disputed the claim as a whole. the defences taken by the Insurance Company, the petitioner herein, are as follows,

(i) as per the terms and conditions of the policy, the company under the policy was not liable in respect of the insurer's liability of the employees of the contractor.

(ii) the respondent no.4 has very specifically entered into contract with the petitioner for his own employees and those were only insured and in this case, the deceased being employee of the contractor who has no contract with the company and hence the petitioner is not liable for the compensation.

The court below framed many issues in this case but it appears that the petitioner did not press for framing of any issue on the pleas taken by it in its reply. Not only this but the petitioner also did not produce any evidence in this case also.

The court below allowed the application of the claimants and amount of Rs.30,000/- was awarded as compensation with interest @ 6% p.a. The costs has also been awarded. Award has been made on 4.2.1983 and this writ petition is filed by the petitioner on 27.09.1983.

Special Civil Application No.6562 of 1984.

5. The respondent no.1, in this Special Civil Application, filed an application for claim of compensation under the provisions of Workman's Compensation Act, 1923 before the Civil Judge (SD) and Ex Officio Commissioner, Junagadh, claiming Rs.50,000/as compensation for the death of her husband, Shri Harsukhlal Tribhovandas Murabia, who died on 6.1.1983 in an accident arising out of and in course of employment. The husband of the applicant - respondent no.1 herein, was working in the Ajanta Printing Press at Junagadh of which the respondent no.2 herein, is the owner. He was getting Rs.600-00 as salary and Rs.10.00 for over time work. He was also getting the miscellaneous expenses for tea, cigarettes, etc. and in all the deceased was getting Rs.1,000-00 per month. The respondent no.1 has come up with the case that her husband died of heart attack which was result of his hard work on the previous day, and he was working upto 8.00 PM, in the employment of the respondent no.2. The respondent no.1 has further

stated that the owner of the press was having the insurance policy of the compensation under Workmen's Compensation Act, 1923.

Both the petitioner and the respondent no.2 have contested the claim application of the respondent no.1. The defences taken by the petitioner are,

(i) the deceased workman did not die of an accident arising out of and in course of employment;

(ii) the workman died of his natural death;

(iii) the primary liability to pay compensation is that of employer and liability of the company is only a contractual one and as such it is not a necessary party to the claim application;

(iv) indemnity granted by the policy is only in respect of compensation payable and not in respect of the penalty, interest and costs.

The Workmen's Compensation Commissioner awarded an amount of Rs.21,000/- towards the compensation and Rs.5250/- towards penalty. Interest @ 6% p.a. and costs have also been awarded by the court below to the claimant.

The award has been made by the court below against both the petitioner and the respondent no.2.

The award was passed on 26.08.1984 and this petition is presented by the petitioner in this court on 6.12.1984.

Special Civil Application No.1879 of 1988.
6. The respondents nos.1 and 2 were the claimants before the Workmen's Compensation Commissioner, Junagadh. Deceased workman Shri Hira Lakham was working with the respondent no.3, herein, at his vessel "Meghgarjana" registered at Veraval Port No.3325 and he was getting Rs.450-00 as salary. He was also getting meal and other expenses from the employer during his voyage travel. On 20.5.1984 the vessel was near the Mastra Tapu, Parvan was break and deceased sustained injury on head and immediately on 25.5.1984 entire vessel was drown under the water and deceased died. The claim has been made of Rs.28,764-00 as compensation, Rs.4050/- as salary, Rs.14,382/- as penalty and Rs.253.80 as notice charges.

The petitioner has taken the defence that it is

liable to only reimbursement to owner, without prejudice to their contention. It has denied each and every allegation made in claim application and further defence has been taken that the court has no jurisdiction to decide the matter.

The Commissioner on 29.9.1987 made the award and the petitioner has filed this petition in this court on 3.12.1987. The Commissioner has awarded Rs.19,200/- as compensation with interest @ 9% from the date of the application till date of realisation of the amount, Rs.8600/- as penalty and further interest has been awarded on the penalty amount in case the said amount is not paid within the stipulated time, and cost of the application has also been awarded.

7. In Special Civil Application No.3624 of 1983, the court granted interim relief in favour of the petitioner and the recovery proceedings of the amount awarded by the Commissioner has been stayed. On 1.12.1983 this Court made final order and interim relief granted earlier was directed to continue to operate until further orders. It is not in dispute that the interim stay order continues till day.

8. In Special Civil Application No.4047 of 1983, the order has been made by this Court on 29.8.1983 that meanwhile ad interim relief against withdrawal of the amount deposited in the Commissioner's Court. On the record of this case I do not find any order of the court permitting the claimants withdrawal of deposited amount of compensation from the Court of Commissioner.

9. In Special Civil Application No.5929 of 1983 this Court made order,

> "Ad interim relief of stay of the award, so far as the appellant, Insurance Company is concerned, on the condition that the appellant, Insurance Company shall deposit in the Court of Commissioner, Godhra in Compensation Case No.23/81 an amount of Rs.1000/- (one thousand) to be paid to the heirs of the deceased workman by way of costs. Such deposit to be made within two weeks from today."

On 24.9.1986 this Court passed the order,

> "Ad interim relief is confirmed on the condition that the petitioner, Insurance Company deposits before the Commissioner of Workmen Compensation,

Panchmahal at Godhra, the amount awarded together with interest and costs within four weeks from today. On such deposit being made, an amount of Rs.30,000/- shall be deposited in the joint names of the respondents in the Fixed Deposit for a period of 37 months with a Nationalised Bank. The respondents shall be entitled to withdraw interest accruing due on the Fixed Deposit as and when such interest becomes due and payable without furnishing security. They shall, however, not be entitled to raise any loan or encash the Fixed Deposit before maturity. The balance of the amount shall be paid to the respondents without furnishing security. Amount of Rs.1,000/- paid by the petitioner - Insurance Company shall be adjusted towards the aforesaid amount to be deposited by the Insurance Company. It will be open to the respondents to take appropriate action against the employer against whom also award is passed for the recovery of the amount due to them under the award."

10. In Special Civil Application No.6562 of 1984 this Court made the order;

"Notice returnable on 18.1.85. In the meanwhile, there will be an order restraining the withdrawal of the amount in excess of Rs.21,000/- (Rupees twenty one thousand) and the proportionate interest on it as awarded. We make it clear that this order does not stand in the way of the disbursement of the Workmen's Compensation Commissioner's award of Rs.21,000/- and interest and in fact, we expect it to be disbursed immediately. We will hear the matter on 18th January 1985.

Dt.2.1.85 Sd/-"

On 21.1.1985 the interim order was made absolute by this Court.

11. In the Special Civil Application No.1879 of 1988 this Court granted interim relief in favour of the petitioner on 18.4.1988 which is as follows,

"Rule. To be heard with Special Civil Applications Nos.3624/83 and 6562/84.

Ad interim stay against recovery of the amount from the Insurance Company on condition that

Rs.19,200/- together with interest and proportionate costs is deposited in this Court within eight weeks from today. On such deposit, the Registrar to invest the amount in long term Fixed Deposit and pay interest six monthly to the claimants in whose favour the award is made."

12. In all these Special Civil Applications the learned counsel for the petitioners, therein, submitted written submissions. Now I will briefly state the submissions raised by the petitioners in their written statements/ arguments.

13. Substantially the submissions in all these petitions are same and gist thereof is as follows,

(i) Liability under Workmen's Compensation Act is fixed by sec.3, whereby an employer is liable to pay compensation in case of personal injury to the workman arising out of any accident, which occurs in the course of employment. It is, therefore, submitted that the Commissioner for Workmen's Compensation has jurisdiction only to determine compensation payable to a workman by his employer. It is, therefore, submitted that since the Act empowers the Commissioner for Workmen's Compensation only to determine compensation which is payable by the employer to the employee, there cannot and does not arise any question of the Commissioner for Workmen's Compensation being entitled to pass any award against the petitioner - insurance company, which has issued a policy for indemnifying the employer.

(ii) In this regard, it is further submitted that the provisions of the Workmen's Compensation Act, 1923 are quite distinct from the provisions of the Motor Vehicles Act. It is submitted that under the provisions of sections 95 and 96 of the Motor Vehicles Act, 1939, statutory insurance coverage is provided for certain class of workman involved with the use of the vehicle. The sec.96 of this Act also provide that an insurer (insurance company) would be liable to satisfy an award as a judgment debtor. The case of statutory liability in respect of a workman in relation to the M.V. Act is quite distinct from the liability under the W.C. Act.

(iii) Once the claim is made solely under the provisions of the W.C. Act with no involvement of the Motor Vehicles Act, there is no statutory liability cast upon the insurer to satisfy an award. The W.C. Act also does not provide for any such compulsory statutory insurance. In the aforesaid premises, it is submitted

that the Commissioner for Workmen's Compensation in the present case had no jurisdiction to pass any award against the petitioner.

(iv) The judgment of this Court reported at 1974 ACJ 55 is in relation to a claim by the heirs of the driver, employee of the insured. It is submitted that in the said judgment, the insurer (insurance company) is held liable, on an interpretation of the provisions of the W.C. Act, 1923 read together with the provisions of sections 95 and 96 of the M.V. Act, 1939. It was held in para 4 of the judgment that in case of a motor vehicle accident, such a deeming fiction may arise because of the subsequent legislative scheme. In para 5 of the judgment, it was held that in a compulsory statutory insurance cover, the Commissioner for Workmen's Compensation can determined the issues of compensation. The said judgment has no bearing with the facts of the present case and the ratio of the said judgment can, by no stretch of imagination, be made applicable to the facts of the present case. It is submitted that in the present case, deceased was not a workman as envisaged by the M.V. Act, 1939 and the death of the deceased was also not due to any involvement of any Motor Vehicle and hence the provisions of sections 95 and 96 of the M.V. Act, 1939 would not be attracted and consequently, no liability can be fastened on the petitioner - insurance company. Further there is no statutory insurance cover.

(v) It is reiterated further that W.C. Act, 1923 casts a statutory liability only upon the employer for payment of compensation and no such statutory obligation is cast upon the insurance company or any other person, except for the employer. It is submitted that sec.14(1) of the W.C. Act, 1923 provides for the liability of the insurance company. Thus, the legislature in its wisdom and after due consideration has cast a statutory liability on the insurance company to satisfy an award only in case where there is an insolvency of the employer and in no other case. It is, therefore, submitted that once the legislature in its wisdom has enacted a provision casting a statutory liability on the insurer only in cases of insolvency of the employer, there cannot and does not arise any question of the Commissioner for Workmen's Compensation in the first instance holding the insurance company liable to satisfy the award.

(vi) It is further submitted that such assertion of jurisdiction by the Commissioner for Workmen's Compensation is contrary to the mandate of the legislature and cannot, by any stretch of imagination, be

countenanced. It is, therefore, submitted that in such circumstances the award of the Commissioner for Workmen's Compensation against the petitioner - insurance company is ex facie bad, illegal and without jurisdiction and hence is required to be quashed and set aside.

(vii) It is further submitted that the High Court of Madras in the judgment reported at 1981 ACJ 532 has specifically held that in the absence of any provisions in the Act, there cannot be any direction by the Commissioner for Workmen's Compensation in the exercise of powers under W.C. Act, 1923 to pay compensation. It is further submitted that in the judgment it has been specifically held that there can be no award against the insurance company except for cases of insolvency of the employer, where, as stated hereinabove, by the operation of the provisions of sec.14, the insurance company can be held liable.

(viii) It is further submitted that High Court of Madhya Pradesh has also in the judgment reported in 1984 ACJ 741 held that except for cases of insolvency of the employer, the Commissioner cannot fasten any liability on the insurance company. In the said judgment, it is also further held that statutory liability is cast only upon the employer and it is only the employer against whom the Commissioner for Workmen's Compensation can pass an award.

(ix) The Kerala High Court has also, in the judgment reported in 32 FLR 371 held that no award can directly be passed against insurer (insurance company) except for cases of insolvency of the employer as envisaged by the section 14 of the Act.

(x) The High Court of Allahabad, in the judgment reported in (1981) FJR 165 held that the Commissioner for Workmen's Compensation has no jurisdiction for directing payment of Compensation by the Insurance Company with which the employer may be insured. The High Court also has, accepting the legislative mandate, held that no such award could be passed against the Insurance Company, indicating that it would be desirable for enactment of such a provision for direct payment. It is, however, submitted that the High Court has specifically held that the Commissioner for Workmen's Compensation has no such jurisdiction. It is, therefore, submitted that the High Court has appreciated the limitations prescribed by the statute and the authority confirmed by the statute, which the High Court has found desirable to be enlarged, but which has not been done by the Court in view of the

limited jurisdiction vested in the Court.

(xi) The High Court of Madras in the case reported in AIR 1967 Madras 318, considering the entire provisions of the Act, specifically held that dispute between the employer and third party as regard indemnity claimed under sec.13 also cannot be decided by the Commissioner for Workmen's Compensation as it is a Tribunal of limited jurisdiction and has no jurisdiction on matter that is not specifically provided for. The Honourable High Court has, in the said judgment, has accepted that the Commissioner for Workmen's Compensation has limited jurisdiction to decide matters between the employee and employer and the liability of the employer to pay compensation as provided for under sec.3. The High Court has therefore, held that the Commissioner for Workmen's Compensation has no jurisdiction to decide matters relating to liability of the insurer who has indemnified the employer.

(xii) The High Court of Rajasthan also in the judgment reported in AIR 1970 Rajasthan 111 has held that liability is cast only upon the employer for payment of compensation to the workmen and only in cases of insolvency covered by section 14, can there arise any question of the insurance company being liable to satisfy the award. The High Court has specifically held that other than the provisions contained in section 14, the Commissioner for Workmen's Compensation has no authority to direct payment by the Insurance Company.

(xiii) In the aforesaid view of the matter and in view of the various judgments hereinabove referred to, it is submitted that the Commissioner for Workmen's Compensation is not vested with jurisdiction to decide and award compensation against the Insurance Company which may have indemnified the insured in respect of its workman. It is submitted that once the Commissioner for Workmen's Compensation has no jurisdiction to decide such matters, there cannot arise any question of the petitioner - Insurance Company being made liable to satisfy and such award.

14. The petitioner in addition to these common grounds has taken specific grounds also in each of the Special Civil Applications. These grounds are also be noticed and taken, these are as follows.

(i) Special Civil Application No.3624/83

(a) that there was serious dispute regarding the

status of the deceased. It is submitted that as per the allegations, the deceased was serving as a Helper whereas as a matter of fact he was serving as a Watchman. It is submitted that the policy issued by the petitioner Insurance company did not cover the risk of such a watchman and the Commissioner for Workmen's Compensation in summary proceedings could not have decided the issue against the petitioner insurance company.

(b) It is further submitted that the dispute as to whether the deceased was a workman covered under the policy or not was entirely out of the jurisdiction of the Commissioner for Workmen's Compensation and he ought not to have entered into such a filed and decided the issue for which had no jurisdiction.

(c) The petitioner further says and submits that admittedly the employer has already satisfied the award and moneys are already received by the claimants. It is further submitted that the employer has instituted Civil Misc. Application No.70/83 before the Commissioner for Workmen's Compensation for recovery of the amount which they have paid to the claimants. It is submitted that the Commissioner for Workmen's Compensation has absolutely no jurisdiction to hear such an application for recovery of the amount by the employer from the petitioner company and the Commissioner for Workmen's Compensation ought to have desisted from even entertaining such an application.

(d) The petitioner further says and submits that the Commissioner for Workmen's Compensation has without any kind of jurisdiction decided the said Civil Misc. Application No.70 of 1983 and given a direction for recovery of the amount under the provisions of sec.31 of the W.C. Act, 1923. It is submitted that there cannot and does not arise any question of the Commissioner for Workmen's Compensation having any jurisdiction to decide such an issue against the petitioner - Insurance Company. As per the Division Bench judgment of this High Court, 1974 ACJ 55 (Guj.), the Commissioner can recover as arrears of land revenue any amount payable by any person under the Act. The insurance company cannot be held to be liable under the Act.

(e) The Commissioner for Workmen's Compensation has completely misdirected itself by coming to a conclusion that the petitioner Insurance Company would be a person under the purview of section 39 of the Act, and hence holding that the petitioner Insurance Company would be liable to satisfy the award. It is submitted that

this is a total misinterpretation of the entire scheme of the Act and the Commissioner for Workmen's Compensation usurped jurisdiction not vested in it. Kindly see para 19 of the aforesaid judgment reported in 1976 Lab. L.C. 723 (A.P.).

(ii) Special Civil Application No.4047 of 1983.

(a) The petitioner says and submits that the Commissioner for Workmen's Compensation ought not to have passed any award against the petitioner Insurance Company inasmuch as liability under the contract of Insurance had not been incurred and the decision of the Commissioner for Workmen's Compensation in a Summary Manner would not and could not be said to be sufficient to hold the petitioner Insurance Company liable for contractual liability undertaken.

(b) The Commissioner for Workmen's Compensation ought to have appreciated that the contractual liability undertaken by the petitioner Insurance Company could be attracted only if it is proved that the injury suffered by the original claimant was at all covered by the policy of insurance and without such conclusive evidence, there cannot arise any question of the petitioner Insurance Company being liable to satisfy the award.

(iii) Special Civil Application No.5929 of 1984.

(a) That the Commissioner for Workmen's Compensation has totally erroneously come to a conclusion that the deceased, whose parents are the claimants of W.C. No.23/81 was an employee of Chandan Rolling Mills to which indemnity has been granted by the petitioner Insurance Company.

(b) The Commissioner for Workmen's Compensation ought to have appreciated that the claimants themselves have in the claim application specifically averred that the deceased Girishkumar Nair was serving as a Mistry with opponent no.1, viz. Dhavanuj Fabricators and Labour Contractor. In view of this admitted fact regarding the deceased being an employee of Dhavanuj Fabricators, the Commissioner for Workmen's Compensation has committed a serious error by coming to a conclusion that the deceased was also an employee of Chandan Rolling Mills.

(c) The Commissioner for Workmen's Compensation has failed in appreciating the terms and exceptions of the policy whereby it is clearly stated that insurance company would not be liable in respect of the insured

liability to the employees of the contractors to insured. The Commissioner for Workmen's Compensation ought not to have held the petitioner Insurance Company is liable to satisfy the award in view of the fact that policy specifically excluded liability to employees of contractors to the insured.

(d) The Commissioner for Workmen's Compensation ought to have appreciated that admittedly the deceased was an employee of the contractor who was doing work for Chandan Rolling Mills and by the said exception, the petitioner Insurance Company has specifically not covered liability in respect of such employees of the contractor.

(e) The Commissioner for Workmen's Compensation ought to have appreciated that liability of the petitioner Insurance Company, it at all, was only under the contract of Insurance and the contract of Insurance whereby liability was sought to be fastened upon the petitioner Insurance Company specifically excluded coverage of risk of workman of the contractors. In the said view of the matter, the Commissioner for Workmen's Compensation ought not to have passed any award against the petitioner Insurance Company.

(iv) Special Civil Application No.6562 of 1984.

(a) The Commissioner of Workmen's Compensation ought to have appreciated that endorsement No.348 which reads as under, the petitioner - Insurance Company is not liable for any interest and or penalty which may be imposed on the insured employer.

"It is hereby understood and agreed that cover provided under this policy shall not extend to Indemnity the Insured/ Insureds in respect of any interest and/ or penalty which may be imposed on him/ them on account of his/ their failure to comply with the requirements laid down under the Workmen's Compensation Act, 1923 and the subsequent amendments of the said Act."

(b) The Commissioner for Workmen's Compensation has totally misdirected itself by coming to a conclusion that the petitioner - Insurance Company would also be liable to pay Rs.5250/- towards penalty and also be liable to pay interest at the rate of 6 % per annum.

(c) The Commissioner for Workmen's Compensation ought to have appreciated that the liability of the

petitioner Insurance Company was not the liability as contemplated under the Act and the liability was only a contractual liability whereby the petitioner - Insurance Company had an indemnity to the employer - insured in respect of liability which may be incurred by the insured.

(d) The Commissioner for Workmen's Compensation ought to have further appreciated that since liability was undertaken by the petitioner Insurance Company, all the terms and conditions of the policy would be applicable and once the contract specifically excluded liability of the petitioner - Insurance Company in respect of penalty and interest, the Commissioner for Workman's Compensation ought not to have awarded any such amount against the petitioner - Insurance Company.

(e) The Commissioner for Workmen's Compensation erred in holding the petitioner - Insurance Company liable under the policy inasmuch as it is not true that liability of the petitioner - Insurance Company was at all attracted. It is submitted that there is no evidence on record to show that the death of the deceased occurred due to his employment and decision of the Commissioner for Workmen's Compensation in such Summary Proceedings could not fasten contractual liability. The Commissioner for Workmen's Compensation therefore, ought not to have passed any award against the petitioner Insurance Company.

(f) The Commissioner for Workmen's Compensation ought to have further appreciated that the liability of the petitioner - Insurance Company was only to indemnify the employer for liability which is covered under the policy and for liability which may be incurred. The Commissioner for Workmen's Compensation ought to have appreciated that there was no evidence to show that liability as covered by the policy had at all incurred and hence the Commissioner ought not to have passed any award against the petitioner - Insurance Company.

(g) The Commissioner for Workmen's Compensation, by holding the petitioner - Insurance Company liable, has gone squarely against the decisions of the Division Benches of this Honourable Court reported in 1989 ACJ 587 in the case of Gautam Transport v. Jiluba as well as 1992 (2) GLH 529 wherein it is specifically held that the petitioner - Insurance Company cannot be held liable for penalty and interest.

(h) The Commissioner for Workmen's Compensation

ought not to have passed any award for penalty and interest against the petitioner - Insurance Company.

(v) Special Civil Application No.1879 of 1988.

(a) that the Commissioner for Workmen's Compensation has misinterpreted the policy issued by the petitioner - Insurance Company and has thereby erred in coming to a conclusion that the petitioner - Insurance Company issued a policy covering liability of the workman.

(b) The Commissioner for Workmen's Compensation ought to have appreciated that policy issued by the petitioner - Insurance Company was a Marin Hull Insurance Policy covering damage or loss to the ship. It is submitted that admittedly the policy is not a policy under the provisions of the Workmen's Compensation Act, and once there is no such policy, there cannot be a presumption of such a contract.

(c) The Commissioner for Workmen's Compensation has further erred gravely in coming to a conclusion that adverse inference could be drawn against the petitioner - Insurance Company.

(d) The Commissioner for Workmen's Compensation ought to have appreciated that there is no statutory compulsory insurance required in respect of Workmen and without there being an explicit cover, no such presumption of a cover could have been raised against the petitioner - Insurance Company.

(e) The Commissioner for Workmen's Compensation erred in coming to a conclusion that the premium of Rs.180/- would cover the risk of workman without there being any evidence on record.

(f) The Commissioner for Workmen's Compensation ought to have appreciated the petitioner - Insurance Company had examined its officer who had clearly stated that the premium of Rs.180/- charged grants only personal accident cover to the crew members of the ship. It is further submitted that the said witness had also specifically stated that no Workmen's Compensation policy in respect of the ship had been issued by the petitioner - Insurance Company. In view of this specific evidence, the Commissioner for Workmen's Compensation ought not to have held the petitioner - Insurance Company liable to satisfy the award.

(g) The Commissioner for Workmen's Compensation ought to have further appreciated that the witness examined by the petitioner had explicitly stated that personal accident liability of crew members is covered as per the guidelines issued by the tariff advisory committee. The Commissioner for Workmen's Compensation ought to have further appreciated that as far as personal accident cover is concerned , only Rs.10/- premium is chargeable, and that too would cover only risk of unnamed members of a crew to a maximum amount of Rs.10,000/-.

(h) The Commissioner for Workmen's Compensation ought to have further appreciated that in case of a death of a crew member the maximum liability under the policy granted by the petitioner - Insurance Company could be Rs.10,000/-. The Commissioner for Workmen's Compensation ought to have, therefore, appreciated that the petitioner - Insurance Company could not have been held liable for any amount in excess of Rs.10,000/-.

(i) The Commissioner for Workmen's Compensation further ought to have appreciated that the petitioner Insurance Company had not been given any intimation regarding death of the crew members. The Commissioner for Workmen's Compensation has not considered the deposition of the employer/ insured who has clearly admitted in his deposition that ex.36 which is allegedly an intimation given to the petitioner - Insurance Company about the death of the deceased was unsigned and was, therefore, de exhibited. It is further submitted that in the absence of any evidence to show that any intimation of the death of a crew member of the petitioner Insurance Company, there could not and does not arise any question of the petitioner - Insurance Company being liable to satisfy any award, and even amount of Rs.10,000/- under personal accident policy could not have been awarded against the petitioner Insurance Company.

14. The learned counsel for the claimants respondents on the other hand contended that these Special Civil Applications under Arts. 226 or 227 of the Constitution, without exhausting alternative remedy of appeal as provided under sec.30 of the W.C. Act, 1923 against the impugned orders of the Commissioner of Workmen's Compensation, by the petitioner Company are not maintainable. More so when, where the petitioner Company has not challenged the validity of the provisions of section 30 or of any other provision of the W.C. Act, 1923 in these Special Civil Applications. Not only this, but it is also not the case of the petitioner Company in these Special Civil Applications that remedy of appeal

provided under Section 30 of the W.C. Act, 1923 against the impugned orders is not adequate and efficacious. The proceedings in which these impugned orders were made, the petitioner Company was a party therein and the order has been made against it and as such it has a right of appeal against these orders under Section 30 of the W.C. Act, 1923. In support this contention the learned counsel for the claimants - respondents placed reliance on the decision of the Supreme Court in case of Durga Prasad versus Navin Chand, reported in JT 1996 (3) SC 564.

15. Shri Mehta, learned counsel for the Insurance Company contended that the Commissioner for Workmen's Compensation was not vested with any jurisdiction to decide the matter against the Company and exercise of jurisdiction by the Commissioner for Workmen's Compensation is patently illegal and contrary to the statutory mandate. There does not arise the question of the petitioner having a remedy of preferring an appeal under section 30. It is further urged that question of preferring appeal under section 30 can arise only in cases where the Commissioner for Workmen's Compensation has exercised jurisdiction vested in it. Once there is no jurisdiction vested in the Commissioner for Workmen's Compensation, there cannot and does not arise any question of the another remedy of preferring an appeal.

It is further submitted that when the Insurance Company has defence under policy, the Commissioner for Workmen's Compensation has no right to decide the dispute between employer and his Insurance Company and when issue is decided by the Commissioner for Workmen's Compensation, appeal not lies under section 30. Carrying further this submission it is urged that the right of appeal conferred by section 30 is also an abrogated right to an employer inasmuch as it requires a pre-payment of the award amount before the appeal is registered by the High Court. It is submitted further that once there is a patent illegal exercise of jurisdiction by the Commissioner for Workmen's Compensation, there cannot arise any question of the Insurance Company being required to deposit the amount and prefer an appeal under the provisions of section 30 of the Act, 1923. So, if there is any illegal exercise of jurisdiction by any of the Court governed by the superintendence of the High Court, the petitioner can always approach the High Court, challenging the illegal exercise of jurisdiction by any of the court(s), tribunals under its superintendence and hence the present petition under Art.226 and 227 of the Constitution of India is competent and maintainable.

16. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. To understand and appreciate the submissions made by the counsel for the both sides, I consider it to be more appropriate and proper to have glance to the relevant provisions of the Workmen's Compensation Act, 1923 and the Rules framed thereunder :

Section 2 - Definitions ;

(1)(b) "Commissioner" : means a Commissioner for Workmen's Compensation appointed under section 20.

(1)(c) "Compensation" : means compensation as provided for by this Act.

(1)(e) "Employer" : includes any body of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and, when the service of a workman and temporarily lent or let on hire to another person by the person whom the workman has entered into a contract of service or apprenticeship, means such other person while the workman is working for him.

(1)(ff) "Minor" : means a person who has not attained the age of 18 years.

(1)(k) "Seaman: : means any persons forming part of the crew of any ship, but does not include the master of the ship.

(1)(m) "Workman" : means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business) who is,

(i) a railway servant as defined in sec.3 of the Indian Railways Act, 1890 (9 of 1890), not permanently employed in any administrative, district or subdivision office of a railway and not employed in any such capacity as is specified in Sch.II, or

(ii) employed in any such capacity as is

specified in Sch.II.

Whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing but does not include any person working in the capacity of a member of the Armed Forces of the Union and any reference to a workman who has been injured shall, where the workman is dead includes a reference to his dependents or any of them.

Section 3 :
Employer's liability for compensation :

(1) If personal injury is caused to a workman by accident arising out of and in course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this chapter;

Provided that the employer shall not be so liable -

(a) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding three days,

(b) in respect of any injury, not resulting in death, caused by an accident which is directly attributable to -

(i) the workman having been at the time thereof under influence of drink or drugs; or

(ii) the wilful disobedience of the workman to an order expressly given, or to a rule expressly framed for the purpose of securing the safety of workman; or

(iii) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workman;

(5) Nothing herein contained shall be deemed

to confer any right to compensation on a workman in respect of any injury if he has instituted in a civil court a suit for damages in respect of the injury against the employer or any other person, and no suit for damages shall be maintainable by a workman in any court of law in respect of any injury,

(a) if he has instituted a claim to compensation in respect of the injury before Commissioner,

or

(b) if an agreement has been come to between the workman and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of this act.

Section 4A :
Compensation to be paid when due and penalty for default

(1) Compensation under section 4 shall be paid as soon as it falls due.

(2) In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the event of liability which he accepts, and such payment shall be deposited with the Commissioner or made to the workman, as the case may be without prejudice to the right of the workman to make any further claim.

(3) Where any employer is in default in paying the compensation due under this Act within one month from the date if fell due, the Commissioner may direct that in addition to the amount of the arrears, simple interest at the rate of six per cent per annum on the amount due together with, if in the opinion of the Commissioner there is no justification for the delay, a further sum not exceeding fifty per cent of such amount shall be recovered from the employer by

way of penalty.

Section 12 :

Contracting - (1) Where any person (hereinafter in this section referred to as the principal) in the course of or for the purposes of his trade or business contracts with any other person (hereinafter in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation which he would have been liable to pay that workman had been immediately employed by him; and where compensation is claimed from the principal, this Act shall apply as if reference to the principal were substituted for references to the employer except that the amount of compensation shall be calculated with reference to the wages of the workman under the employer by whom he is immediately employed.

(2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor, he shall be entitled to be indemnified by the contractor (or any other person from whom the workman could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section he shall be entitled to be indemnified by any person standing to him in the relation of a contractor from whom the workman could have recovered compensation, and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.

(3) Nothing in this section shall be construed as preventing a workman from recovering compensation from the contractor instead of the principal.

(4) This section shall not apply in any case where the accident occurred elsewhere than on, in or about the premises on which the principal has undertaken, or usually undertakes, as the case may be, to execute the work or which are otherwise under his control or management.

Section 13 :

Remedies of employer against stranger - where a workman has recovered compensation in respect of any injury caused under circumstances creating a legal liability of some person other than the person by whom the compensation was paid to pay damages in respect thereof, the person by whom the compensation was paid nay person who has been called on to pay an indemnity under section 12 shall be entitled to be indemnified by the person so liable to pay damages as aforesaid.

Section 14 :

Insolvency of employer - (1) Where any employer has entered into a contract with any insurers in respect of any liability under this Act to any workman, then in the event of the employer becoming insolvent or making a composition or scheme of arrangement with his creditors or, if the employer is a company, in the event of the company having commenced to be wound up, the rights of the employer against the insurers as respects that liability shall, notwithstanding anything in any law for the time being in force relating to insolvency or the winding up of companies, be transferred to and vest in the workman and upon any transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer, so, however, that the insurers shall not be under any greater liability to the workman than they would have been under the employer.

(2) If liability of the insurers to the workman is less than the liability of the employer to the workman, the workman may prove for the employer to the workman, the workman may prove for the balance in the insolvency proceedings of liquidation.

(3) Where in any case such as is referred to in sub-section (1) the contract of the employer with the insurers is void or voidable by reason of non-compliance on the part of the employer with any terms or conditions of the contract (other than a stipulation for the payment of premia), the provisions of that subsection shall apply as if the contract were not void or voidable, and the insurers shall be entitled to prove in the insolvency proceedings or liquidation for the

amount paid to the workman;

provided that the provisions of this subsection shall not apply in any case in which the workman fails to give notice to the insurers of the happening of the accident and of any resulting disablement as soon as practicable after he becomes aware of the institution of the insolvency or liquidation proceedings.

(4) There shall be deemed to be included among the debts which under section 49 of the Presidency Towns Insolvency Act, 1909 (3 of 1909), or under sec.61 of the Provincial Insolvency Act, 1920 (5/ 1920), or under sec.61 of the Provincial Insolvency Act, 1920 (5 of 1920) or under sec.230 of the Indian Companies Act, 1913 (7 of 1913), are in the distribution of the property of an insolvent or in the distribution of the assets of a company being wound up to be paid in priority to all others debits, the amount due in respect of any compensation the liability wherefor accrued before the date of the order of adjudication of the insolvent or the date of the compensation of the winding up, as the case may be, and those Acts shall have effect accordingly.

(5) Where the compensation is a half - monthly payment, the amount due in respect thereof shall, for the purposes of this section, be taken to be amount of the lump sum for which the half monthly payment could, if redeemable be redeemed if applications were made for that purpose under sec.7, and a certificate of the Commissioner as to the amount of such sum shall be conclusive proof thereof.

(6) The provisions of subsection (4) shall apply in the case of any amount for which an insurer is entitled to prove under subsection (3), but otherwise those provisions shall not apply where the insolvent or the company being wound up has entered into such a contract with insurers as is referred to in subsection (1).

(7) This section shall not apply where a company is wound up voluntarily merely for purpose of reconstruction or of amalgamation with another company.

Section 15 :
Special provisions relating to masters and seaman-

This Act shall apply in the case of workman who are masters of ships or seaman subject to the following modifications, namely:

(i) The notice of the accident and the claim for compensation may, except where the person injured is the master of the ship, be served on the master of the ship as if he were the employer, but where the accident happened and the disablement commenced on board the ship, it shall not be necessary for any seaman to give any notice of the accident.

Section 19 :
Reference to Commissioners -

(1) If any question arises in any proceedings under this Act as to the liability of any person to party compensation (including any question as to whether a person injured is or not a workman) or as to the amount or duration of compensation (including any question as to the nature or extent of disablement), the question shall, in default of agreement, be settled by a Commissioner.

(2) No civil court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by a Commissioner or to enforce any liability incurred under this Act.

Section 20 :
Appointment of Commissioners.
(1) The State Government may, by notification in the Official Gazette, appoint any person to be a Commissioner for Workmen's Compensation for such area as may be specified in the notification.

(2) Where more than one Commissioner has been appointed for any area, the State Government may, by general or special

order, regulate the distribution of business between them.

(3) Any Commissioner may, for the purpose of deciding any matter referred to him for decision under this Act, chose one or more persons possessing special knowledge of any matter relevant to the matter under inquiry to assist him in holding the inquiry.

(4) Every Commissioner shall be deemed to be a public servant within the meaning of the Indian Penal Code (45 of 1860).

Section 24
Appearance of parties :
Any appearance, application or act required to be made or done by any person before or to a Commissioner (other than an appearance of a party which is required for the purpose of his examination as a witness) may be made or done on behalf of such person by a legal practitioner or by an official of an Insurance company or registered trade union or by an Inspector appointed under subsection (1) of Sec.8 of the Factories Act, 1948 (63 of 1948), or under subsection (1) of Sec.5 of the Mines Act, 1952 (35 of 1952), or by any other officer specified by the State Government in this behalf, authorised in writing by such person, or with the permission of the Commissioner, be any other person so authorised.

Section 27
Power to submit cases :
A Commissioner may, if he thinks fit, submit any question of law for the decision of the High Court and, if he does so, shall decide the question in conformity with such decision.

Section 30 - Appeals : (1) An appeal shall lie to the High from the following orders of a Commissioner, namely,

(a) an order awarding as compensation a lump sum whether by way of redemption of a half monthly payment or otherwise of disallowing a claim in full or in part for a lump sum;

(aa) an order awarding interest or penalty under

Section 4A;

(b) an order refusing to allow redemption of a half monthly payment;

(c) an order providing for the distribution of compensation among the dependents of a deceased workman, or disallowing any claim of a person alleging himself to be such dependent;

(d) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of subsection (2) of sec.12, or

(e) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions:

provided that no appeal hall lie against any order unless a substantial question of law is involved in the appeal and, in the case of an order other than an order such as is referred to in cl.(b), unless the amount in dispute in the appeal is not less than three hundred rupees :

Provided further that no appeal shall lie in any case in which the parties have agreed to abide by the decision of the Commissioner, or in which the order of the Commissioner gives effect to an agreement come to by the parties.

Provided further that no appeal by an employer under cl.(a) shall lie unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against.

(2) The period of limitation for an appeal under this section shall be sixty days.

(3) The provisions of sec.5 of the Indian Limitation Act, 1908 (9 of 1908), shall be applicable to the appeals under this section.

Section 30A
Withholding of certain payments pending decision of appeal -

Where an employer makes an appeal under cl.(b) of

subsection (1) of sec.30, the Commissioner may, and if so directed by the High court shall, pending the decision of the appeal, withhold payment of any sum, if deposit with him.

Section 32
Power of the State Government to make rules -

(1) The State Government may make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely,

(c) for prescribing the procedure to be followed by Commissioners in the disposal of cases under this Act and by the parties in such cases.

17. In exercise of the powers conferred by section 32 of the Act, 1923, the Govt. of Gujarat made the rules, namely, the Gujarat Workmen's Compensation Rules, 1967. The procedure to be followed by a Commissioner in the disposal of cases under the Act, 1923 or these rules and by the parties in such cases shall be regulated in accordance with rules contained in Part-VI of the Rules, 1967. The rules, relevant for the decision of the issues raised in these petitions, are as under;

Rule 23
Examination of the applicant -

(1) On receiving an application of the nature referred to in section 22, the Commissioner may examine the applicant on oath, or may send the application to any officer authorised by the State Government in this behalf and direct such officer to examine the applicant and his witnesses and forward the record thereof to the Commissioner.

(2) The substance of any examination made under sub-rule (1) shall be recorded in the manner provided for the recording of evidence in section 25.

Rule 24
Summary dismissal of application - (1) The Commissioner may, after considering the application and the record of the examination, if

any, of the applicant under rule 23, summarily dismiss the application, if, for reasons to be recorded, he is of the opinion that there are no sufficient grounds for proceeding thereon.

(2) The mere dismissal of the application under sub-rule (1) shall not preclude the applicant from presenting a fresh application for the settlement of the same matter.

Rule 25

Preliminary inquiry into application - If the application is not dismissed under rule 24, the Commissioner may, for reasons to be recorded, call upon the applicant to produce evidence in support of the application before calling upon any other party, to defend it and if upon considering such evidence, the Commissioner is of opinion that there is no case for the relief claimed, he may dismiss the application with a brief statement of his reasons for so doing.

Rule 26

Notice to opposite party - If the Commissioner does not dismiss the application under rule 24 or rule 25, he shall send to the party from whom the applicant claims relief (hereinafter referred to as "the opposite party") a copy of the application, together with a notice of the date on which he will dispose of the application, and may call upon the parties to produce on that date any evidence which they may wish to tender.

Rule 27

Appearance and examination of opposite party -

(1) The opposite party may, and if so required the Commissioner, shall at or before the first hearing or within such time as the Commissioner may permit, file a written statement dealing with the claim raised in the application, and any such written statement shall form part of the record.

(2) If opposite party contests the claim, the Commissioner may, and if no written statement has been filed, shall proceed to examine him upon the claim, and shall reduce the examination to writing.

Rule 28

Framing of issues - (1) After considering any written statement and the record of any

examination of the parties, the Commissioner shall ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues upon which the right decision of the case appears to him to depend.

(2) In recording the issues, the Commissioner shall distinguish between those issues which in his opinion relate to questions of fact and those which relate to question of law.

Rule 29

Power to postpone trial of issues of fact where issues of law arise, when issues both of law and fact arise in the same case, and the Commissioner is of the opinion that the case may be disposed of on the issues of law only, he may try those issues first and for that purpose may if he thinks fit, postpone the determination of the issues of fact until after the issues of law have been determined.

Rule 32

Judgment - (1) The Commissioner shall, while passing orders, record concisely a judgment, his finding on each of the issues framed and his reasons for such finding.

(2) The Commissioner shall, at the time of signing and dating his judgment, pronounce his decision, and thereafter no addition or alteration shall be made to the judgment other than the correction of a clerical or arithmetical mistake arising from any accidental slip or omission.

Rule 39

Procedure where indemnity claimed under section 12(2) (1) where the opposite party claims that if compensation is recovered from him, he would be entitled, under subsection (2) of section 12, to be indemnified by a person not being a party to the case, he shall, when first called upon to defend the application, present a notice of such claim to the Commissioner accompanied by the requisite fees and the Commissioner shall thereupon issue a notice to such person in Form-I.

(2) If any person served with a notice under sub

rule (1) desires to contest the applicant's claim for compensation or the opposite party's claim to be indemnified, he shall appear before the Commissioner on the date fixed for the hearing of the case or on any date to which the case may be adjourned and, if he so appears, he shall have all the rights of a party to the proceedings. If he does not so appear he shall be deemed to have admitted the validity of any award which may be made against the opposite party and to have admitted his own liability to indemnify the opposite party for any compensation which may be recovered from him.

Provided that, if any person so served appears subsequently and satisfies the Commissioner that he was prevented by any sufficient cause from appearing, the Commissioner shall, after giving notice to the applicant and aforesaid opposite party hear such person, and may set aside or vary any award made against such person upon such terms as Commissioner thinks just.

(3) If any person served with a notice under sub-rule (1) whether or not he desires to contest the applicant's claim for compensation or the opposite party's claim to be indemnified, claims that being a contractor he is himself a principal and is entitled to be indemnified by a person standing to him in the relation of a contractor from whom the workmen could have recovered compensation he shall on or before the date fixed in the notice under sub-rule (1) present a notice of such claim to the Commissioner accompanied by the requisite fee and the Commissioner shall thereupon issue notice to such person in Form M-(4). If any person served with a notice under sub-rule (3) desires to contest the applicant's claim for compensation, or the claim under sub-rule (3) to be indemnified, he shall appear before the Commissioner on the date fixed in the notice in Form K or on any date to which the case may be adjourned and if he so appears, shall have all the rights of a party to the proceedings. If he does not so appear he shall be deemed to have admitted the validity of any award which may be made against the original opposite party or the person served with a notice under sub-rule (1) and have admitted his own liability to indemnify the party against whom such award is made for any compensation which may be recovered from him.

Provided that, if any person so served appears subsequently and satisfies the Commissioner that he was prevented by any sufficient cause from appearing, the Commissioner, shall, after giving notice to all parties on the record, hear such person, and may set aside or vary any award made against such person upon such terms as the Commissioner thinks just.

(5) In any proceedings in which a notice has been served on any person under sub-rule (1) or sub-rule (3), the Commissioner shall, if he awards compensation, record in his judgment a finding in respect of each of such persons, whether he is or is not liable to indemnify any of the opposite parties, and shall specify the party, if any, whom he is liable to indemnify.

18. The petitioner company, in these Special Civil Applications, has not challenged the constitutional validity of the section 30 of the Workmen's Compensation Act, 1923 (hereinafter referred as the Act, 1923).

19. The learned counsel for the petitioner company does not dispute that an order of the Workmen's Compensation Commissioner awarding as compensation a lump sum whether by way of redemption of a half monthly payment or otherwise of disallowing a claim in full or in part for a lump sum, is appealable under clause (a) of subsection (1) of section 30 of the Act, 1923 though unless a substantial question of law is involved in the appeal.

20. The petitioner Insurance Company was party to each claim case, is also not in dispute. It is also not in dispute that the Workmen's Compensation Commissioner passed award - order in these cases against the petitioner - Insurance Company.

21. The petitioner Insurance Company was an aggrieved party in these matters and right of appeal against the award/ order of the Workmen's Compensation Commissioner was available to the company under section 30 of the Act, 1923. It is different matter that appeal could have been entertained by this Court only in case where a substantial question of law involved therein, and unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against.

22. Explanation of the petitioner - Insurance company, not to file appeal in these matter is that the order of the Workmen's Compensation Commissioner, against the company, is without jurisdiction, it cannot and does not arise any question of the appellate remedy of preferring an appeal. It is further submitted that the right of appeal conferred by section 30 of the Act, 1923 is an abrogated right to an employer inasmuch as it requires a pre payment of the awarded amount before the appeal is registered by this Court. Once there is a patent illegal exercise of jurisdiction by the Workmen's Compensation Commissioner, there cannot arise any question of the Insurance company being required to deposit the amount and prefer an appeal under the provisions of section 30 of the Act, 1923. The petitioner Insurance Company in support of its aforesaid contention has not cited any authority either of this Court or any other High Court or Hon'ble Supreme Court of India.

23. I may refer to a decision of the Madhya Pradesh High Court in National Insurance Company Ltd. vs. Saifuddin and others, 1992 ACJ 736. In Saifuddin's case the Insurance Company filed appeal under section 30 of the Act, 1923 against the order passed by the Commissioner, Workmen's Compensation, whereby the learned Commissioner has awarded Rs.23,100/- as compensation against all the three respondents (which includes the Insurance Company) who have been held to be jointly and severally liable to pay same. The counsel for the claimants - respondents has raised a preliminary objection to the maintainability of the appeal under section 30 of the Act, 1923, on the ground that such an appeal cannot lie unless the memorandum of appeal is accompanied by a certificate of the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against and that in the instant case the appellant has not deposited the amount awarded by the impugned order. The court has referred a Division Bench decision of same court in New India Assurance Company Limited versus Commissioner for Workmen's Compensation, 1973 ACJ 428 (MP) wherein it has been held that in an appeal by the insurance company which is not the employer, the condition as to deposit in an appeal under section 30 of the Act does not apply. The restriction contained in the proviso to section 30 of the Act for depositing the amount is expressly limited to an appeal filed by the employer and since the insurance company is not the employer, that restriction is not applicable to the insurance company. The preliminary

objection raised in that case was rejected relying on this Division Bench decision. In New India Insurance Company Limited versus Commissioner for Workmen's Compensation, 1973 ACJ 428 (MP), the Insurance Company filed writ petition in the High Court for quashing an order passed by the Commissioner, Workmen's Compensation, Indore, holding the applicant (therein) liable for payment of Rs.8,400/- as compensation to respondent claimant. On behalf of the claimant a preliminary objection was taken that since an appeal lay under section 30 of the Act, 1923 which had not been filed by the insurance company, the writ petition should be dismissed in limine. An argument was advanced that the insurance company had no right to file an appeal against the award of compensation by the Commissioner for Workmen's Compensation. Negativing the contention, the Court observed :

> "We are unable to agree with this contention of learned counsel for the applicant. The words of section 30 of the Workmen's Compensation Act are quite wide and they do not restrict the right of appeal to any particular party. Therefore, any person aggrieved by the order is entitled to file an appeal. The restriction contained in the proviso for depositing the amount is expressly limited to an appeal filed by the employer. Since the insurance company is not the employer even that restriction is not applicable to the insurance company. As we have held above, the insurance company is a proper party and being in fact a party to the proceedings was entitled to file an appeal as the company was aggrieved by that decision."

"Employer", is defined in clause (e) of subsection (1) of the section 2 of the Act 1923, includes any body of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and, when the services of a workman are temporarily lent or let on hire to another person by the person whom the workman has entered into contract of service or apprenticeship, means such other person while the workman is working for him. Reading section 2(1)(e) of the Act, 1923 it is clear that the insurer in not the employer of the workman. Proviso to section 30 of the Act, 1923 expressly provides that no appeal by the employer (emphasis provided) under clause (a) of the said section shall lie unless the memorandum of appeal is accompanied by a certificate by the Commissioner of Workmen's Compensation to the effect that the appellant

has deposited with him the amount payable under the order appealed against conjoint reading of the section 2(1)(e) and section 30 of the Act, 1923 leaves no doubt in the mind of the court that no appeal, under clause (a) of the said section by the employer, shall lie unless he deposits awarded amount of compensation with the Commissioner of Workmen's Compensation. The condition of deposit of the amount of compensation with the Commissioner of Workmen's Compensation, for maintainability of the appeal under clause (a) of the section 30 of the Act, 1923 where the insurer is the appellant cannot be insisted upon. So the provisions of sections 2(1)(e) and 30 of the Act, 1923 makes the position of law clear and insurer, where it felt aggrieved of the award/ order of Workmen's Compensation Commissioner, filed appeal under clause (a) of the section 30 of the Act, 1923, is not under any legal obligation to deposit the awarded amount of compensation with the Commissioner of Workmen's Compensation. The condition as to deposit of awarded amount of the compensation in an appeal under clause (a) of section 30 of the Act, 1923 does not apply in an appeal filed by the insurer who is not the employer. In case the provisions of the section 2(1)(e) and 30 of the act, 1923 are to be read to mean the deposit of amount of compensation awarded with the Commissioner of Workmen's Compensation a condition precedent for maintainability of the appeal of the Insurance Company, under clause (a) of the section 30 of the Act 1923, then this court have to read something more in these provisions, which legislature does not intent. The legislature in its wisdom puts the condition of deposit of the amount of compensation awarded, with the Commissioner of Workmen's Compensation as a condition precedent of maintainability of appeal under section 30 of the Act, 1923 by the employer. In case the legislature would have intended to apply this condition of deposit of amount of compensation awarded in all appeal under clause (a) of section 30 of the Act, 1923, whosoever may be appellant, it could have been done either providing in the section 30 itself or by inclusion of the Insurer in the definition of the employer in section 2(1)(e) of the Act, 1923. Insurer cannot be taken or accepted as an employer by any stretch of imagination. It only comes in picture under a contract, i.e. Workmen's Compensation Contract, in the form of Insurance policy, entered into between employer and the insurance company, wherein, it (insurance company) undertakes to reimburse for liability of the Workmen's Compensation, as determined and awarded, of the employer of the workman. So in these cases where the petitioners, Insurance Company would have filed appeals, under clause

(a) of the section 30 of the Act, 1923, against the award of the Workman's Compensation the amount awarded was not required to be deposited. These appeals would have been maintainable without enclosed certificate of the deposit of the amount of compensation awarded by the Workmen's Compensation Commissioner, with the Commissioner. However, where the Insurance Company preferred appeal under clause (a) of the section 30 of the Act, 1923, for and on behalf of the employer and on its behalf then the proviso (iii) to subsection (1) of the section 30 of the Act, 1923 will apply and reason is very obvious. Though the aim of the insurer is to exonerate him own liability but the appeal is filed for and on behalf of the employer also. What the insured cannot do by himself, viz., filing of an appeal without compliance with the requirement of the third proviso to section 30 of the Act, 1923 cannot be done by another on his behalf. So the third proviso to section 30(1) of the Act, 1923 governs such appeals.

The Orissa High Court in the case of New India Assurance Co. Ltd. versus Shankar Behera and others, (1988) 1 TAC 496 held that the appeal by the insurer maintainable without deposit of the amount. Next I may refer the decision of the Kerala High Court in the case of New India Assurance Company vs. M. Jayarame Naik and another, 1982 ACJ 3. In this case the Insurance Company filed appeal against the award of the Workmen's Compensation Commissioner under section 30(1)(a) of the Act 1923. Insurance Company did not deposit the amount awarded nor produced the certificate with the memo of appeal. Relying on the decision of the Orissa High Court in the case of Central Engineering Corporation versus Dorai Raj, 1958 -65 ACJ 19 held that the appeal is not maintainable. In the case of Central Engineering Corporation (supra), the appeal was there before the High Court by the employer against the award of the Workmen's Compensation Commissioner under section 30(1)(a) of the Act 1923. The counsel of the workman in that case took a preliminary point as to the maintainability of appeal. His contention was that no certificate by the Commissioner to the effect that the employer - appellant had deposited with him the amount payable under the order appealed against, having accompanied the memorandum of appeal as required by the third proviso to section 30(1) of the said Act, the appeal did not lie, for according to him, the proviso is mandatory and not merely directory. The question for consideration before the Orissa High Court, in that case has arisen whether the proviso third to the section 30(1) of the Act, 1923 is mandatory or directory. The Court, in that relying on decision of

Calcutta High Court and after referring to the decision of the Hon'ble Supreme Court and Patna High Court held the proviso third to section 30(1) of the Act, 1923 to be mandatory. Some of the observations, the Court made in para no.3 of the judgment are extracted, which are as

"The principle of section 30 is that if the appeal be such that by it the workman's right to the compensation awarded to him is placed in jeopardy, security for the workman must be provided for by the deposit of the amount of compensation and such a deposit would be essential to the maintainability of the appeal. If on the other hand, the workman's right to the compensation awarded does not come into question in the appeal at all, there is no risk to the workman's getting the compensation awarded to him and there is thus, no necessity for requiring any one, preferring such an appeal to deposit the compensation money."

That case is clearly distinguishable as there the employer was the appellant and the appeal was not maintainable as certificate of deposit of the amount of compensation awarded appealed against was not accompanied the memorandum of appeal. Proviso third of the section 30(1) of the Act 1923 makes it obligatory on the part of the employer where he/ it challenged the award of the Commissioner in appeal, to deposit the amount of compensation payable under the award appealed against. In the case of New India Assurance Company versus M. Jayarama Naik and another (supra) before Kerala High Court, the appeal under section 30(1)(a) of the Act, 1923 was by the Insurance Company. On behalf of the workman respondent a preliminary objection was raised, namely, that the appeal is not maintainable, since the appellant - insurance company has not deposited with the Commissioner the amount awarded as compensation and has not produced along with the memorandum of appeal a certificate to that effect issued by the Commissioner as required by the third proviso to section 30(1) of the Act, 1923. According to the appellant - insurance company that proviso does not govern an appeal preferred by an insurance company who is impleaded in the proceedings before the Workman's Compensation Commissioner. In that case the insurance company has in the appeal filed by it under section 30(1)(a) of the Act, 1923 questioned the whole award. According to the appellant - insurance company, in that case, the order of the Commissioner which is appealed against was illegal

and not supported by the provisions of the Act or any law. The appellant insurance company sought to have the award of compensation as a whole set aside. It was a case where the workman (a driver of goods vehicle) claimed compensation under the provisions of the Act, 1923 for personal injuries caused to him as a result of a bus collided against the truck which he was driven on the fateful day. There appears to have been no dispute that the accident arose out of and in course of employment. The two issues raised therein concerned the salary drawn by and the workman and the nature of his disablement whether permanent or partial. On these facts the Kerala High Court has given its decision in the case. The Court has also referred the decision of the Orissa High Court in the case of CE Corporation vs. Dorai Raj (supra) and that of M.P. High Court in the case of Northern India Insurance Company versus Commissioner for Workmen's Compensation (supra). The portion of this judgment in para nos.7, 8 and 9 is relevant and is as follows:

Para no.7 : Therefore, the insurer cannot under section 96 of the Motor Vehicles Act defend the proceedings disputing the insured's liability for the compensation claimed on any ground, much less on such grounds as those raised herein, namely, raising an issue of the amount of monthly salary of the employee, or of nature of the injury. These are, thereunder, contentions to be advanced by the employer and if the findings thereon go against him he can prefer an appeal against the order as provided for in section 30 of the Act. We are not in this case concerned with the question as to whether the insurer can, because the liability of insured is statutorily passed on to the insurer, defend the proceedings before the Commissioner, Tribunal or Court as the case may be, by advancing such grounds as are available to the insured and whether the insurance company can on such grounds available to the insured employer prefer an appeal against the award of compensation. Without deciding that question, we will assume, that it is possible. But then the insurer is only stepping into the shoes of the insured, the employer, and the defence is not qua insurer but in the name of the insured and in his place. An appeal preferred on such grounds, if successful, will jeopardise the employee's right to recover the compensation from the employer also. What the insurer seeks in such an appeal is that the insured may be found to be not liable to pay the compensation, and consequently, the

insurer also may be held to be not liable. The primary relief sought for is the first mentioned relief and other relief is consequent to the grant of that relief. Hence such an appeal is preferred by the insurer for and on behalf of the employer and in his stead, though the aim of the insurer is to exonerate his own liability, what the insured cannot do by himself, viz., filing of an appeal without complying with the requirements of the third proviso to section 30 of the Act, cannot be done by another on his behalf. So the third proviso to section 30 of the Act governs such appeals.

Para 8 We are in agreement with the statement of law on this point in C.E.Corporation versus Dorai Raj :

"The principle of section 30 is that if the appeal be such that by it the workman is right to the compensation awarded to him is placed in jeopardy, security for the workman must be provided for by the deposit of the amount of compensation and such a deposit would be essential to the maintainability of the appeal. If on the other hand, the workman's right to the compensation awarded does not come into question in the appeal at all, there is no risk to the workman's getting the compensation awarded to him and there is thus no necessity for requiring any one, preferring such an appeal to deposit the compensation money.

Para 9 :

In the decision of Madhya Pradesh High Court in Northern India Insurance Company vs. Commissioner for Workmen's Compensation relied on by the learned counsel for the appellant, the insurance company invoked writ jurisdiction of the High Court contending that the insurance company should not have been made a party to the proceedings under Workmen's Compensation Act, 1923. The Madhya Pradesh High Court held that the insurance company was a proper party. Dealing with the preliminary objection that since the insurance company could have filed an appeal under section 30 of the Act, the writ jurisdiction could not be invoked and the answer thereto that the insurance company cannot challenge the award of the compensation by filing

an appeal, that High Court held that on wording of section 30, any person aggrieved by the order is entitled to appeal and observed in that connection that the third proviso would govern only an appeal preferred by an employer. The question of applicability of the third proviso to an appeal filed by the insurer on grounds available to the insured only did not arise in that case.

The ratio of this decision is that where the Insurance Company filed appeal under section 30(1)(a) of the Act, 1923, against the award of the Workmen's Compensation Commissioner, awarding compensation to the workman, challenged it own its on behalf as well as on behalf of the employer on the grounds available to the insured only. Insistence for deposit of the awarded amount of compensation, as a condition precedent for maintainability of appeal under section 30(1)(a) of the Act, 1923 by the Insurance Company, where the right to compensation awarded, of the workman is placed in jeopardy and not otherwise. Certainly where the Insurance Company challenged the award of the Workmen's Compensation Commissioner in appeal filed by it under section 30(1)(a) of the Act, 1923 as a whole and on grounds also which are available to insured only the right of the workman to compensation awarded to him is placed in jeopardy and in such case security for the workman must be provided for by the deposit of the amount of compensation and such a deposit would be essential to the maintainability of the appeal. In these cases the Insurance company has not made or raised any ground or grievance that the application filed by the workman was not maintainable against the employer or that otherwise also the amount of compensation was not awardable against the employer. The challenge to the order passed by the Civil Judge (SD) and Ex Officio Commissioner for Workmen's Compensation, Godhra is made by the Insurance Company in so far it is concerned, in these Special Civil Applications. The prayers made in the Special Civil Application No.5929/83 read as under :

Para no.14 :

The petitioner, therefore, prays that Your Lordships may graciously be pleased to issue a writ of certiorari and/ or any other appropriate writ, order or direction and to :

(a) quash and set aside the order passed by the Civil Judge (SD) and Ex Officio Commissioner for Workmen's Compensation, Godhra in Workmen's

Compensation Case No.23 of 1981 dated 4.2.83 in so far as the petitioner - company is concerned;

(b) pending admission, hearing and final disposal of this petition, further proceedings in Workmen Compensation Case No.23 of 1981 of the Court of Civil Judge (SD) and Ex Officio Commissioner for Workmen's Compensation, Godhra be stayed;

(c) provide for the costs of this petition;

(d) pass such order or orders as may be deemed fit under the circumstances of the case.

It is not the case where the petitioner - Insurance Company has filed appeal under section 30(1)(a) of the Act, 1923, against the order of the Commissioner of Workmen's Compensation and same has been dismissed by the appellate court only on the ground that the memorandum of appeal is not accompanied by a certificate by the Commissioner to the effect that the appellant (Insurance Company herein) has deposited with him the amount payable under the order appealed. In these Special Civil Applications it is not the grievance of the petitioner Insurance Company that right of appeal conferred by section 30(1)(a) of the Act, 1923 is an abrogated right inasmuch as it requires a pre-payment of awarded amount before the appeal is registered. It is appropriate to refer the pleadings of the petitioner - Insurance Company made in para no.13 of the Special Civil Application, which are as follows :

Para 13 :
The petitioner states that no appeal can be filed as the petitioner's contention was that it cannot be made a party under the Workmen's Compensation Act and that no award can be passed against it. The petitioner cannot file appeal under the provisions of the Act. Even otherwise also, the impugned order passed by the Commissioner for Workmen's Compensation is null and void, de hors the Act and, therefore, it has approached this Hon'ble Court by filing the present petition.

Though it is a different matter now at this stage the counsel for the petitioner - Insurance Company has given this justification to approach this Court under article 226 of the Constitution against the order of the Commissioner of Workmen's Compensation, without first availing the right of appeal conferred by a statute but

as we read in the pleadings aforesaid, it was not the ground given, to by pass the remedy of appeal.

The issue raised by the petitioner - Insurance Company in the context, it is raised then too, this Court does not find any justification in the act of the petitioner to bye pass the statutory remedy of appeal, as provided under section 30(1)(a) of the Act, 1923, in the present case. Third proviso to the section 30(1) of the Act, 1923, merely on the ground it provides requirement of deposit of amount of compensation, awarded by Commissioner of Workmen's Compensation by the employer before availing the right to appeal, is not ultra vires. The Kerala High Court had occasion to consider this question in the case of T. Narayanan Nair versus Union of India, 1990 (2) TAC 517 and thus held ;

"Viewed from the point of view of the employer, it is not difficult for him to secure in these days necessary financial aid from the authority or institutions holding money. Even if it be a bit inconvenient, an ordinary employer would have the wherewithal to meet payments of that nature. The inconvenience caused in the process is no reason to strike down the statutory provision.

Reference next may have to the decision of the Madras High Court in case of Nathamani Gounder vs. State of Tamil Nadu, 1986 (2) LLJ 423, wherein the Court thus held;

"If the legislature provides no appeal in a particular case or provides for appeal subject to certain conditions it is a piece of proper legislation. Even if a statute denies right of appeal the statute cannot be held to be bad legislation. Right of appeal is a creature of statute and its exercise, scope and results are controlled by that statute which creates that"

The right of appeal as provided under section 30 of the Act, 1923 is available only where a substantial question of law is involved in the appeal. The Act, 1923 is a welfare legislation, it is generally expected that its provisions would receive interpretation so as to advance the object and purpose of the Act. The Act 1923, in spite of its colonial origin had a worker's welfare voice to which has been added to conceptual contents of social justice based on Part- IV of the Constitution. The Act

1923 is a special legislation, a welfare legislation. The legislature has, in its wisdom, provided right of appeal under section 30(1)(a) of the Act, 1923 to the employer, subject to fulfillment of two essential conditions, namely, (i) a substantial question of law does involve in the appeal and (ii) the memo of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against. The object is to give finality to the decision of the Commissioner of Workmen's Compensation. It is not the case of the petitioner - Insurance Company, in these Special Civil Applications that it has no finances with it to deposit the amount of compensation, awarded to the claimants by the Workmen's Compensation Commissioner, with him and and to file appeal thereafter. The petitioner - Insurance Company has sufficient solvency and there would not have been any difficulty with it to deposit amount of awarded compensation with the Commissioner of Workmen's Compensation and filed appeal before appellate court (here in this case, this Court) under section 30(1)(a) of the Act 1923 against the order/ award of the Commissioner. The Rajasthan High Court in the case of Krishna Lime Works versus Presiding Officer, Workmen's Compensation Commissioner, 1990 (1) LLJ 302, while dealing with question of the remedy of appeal in Workmen's Compensation Act, 1923, held :

> "The Workmen's Compensation Act is a welfare legislation and the provision of an appeal on fulfillment of a condition cannot be held to be an inadequate right of appeal. A businessman should regulate his business in a manner which insures compliance with statutory provisions of law. Right of appeal against an order of the Commissioner under Workmen's Compensation Act which lies to the High Court on a substantial question of law is not an appeal from Caesar to Caesar or an appeal or revision to departmental tribunals composed of persons belonging to departmental hierarchy without adequate legal training and background. The provisions of section are mandatory and with a statutory provision of right of appeal which is circumscribed by a condition of deposit of amount of compensation for the security of the workman."

In these facts and circumstances, the plea of the petitioner - Insurance Company that the section 30(1)(a) of the Act, 1923 gives it only an abrogate right of

appeal is not tenable and it is difficult to be accepted by this Court.

24. It takes me now to the other grounds and reasons given by the petitioner - Insurance Company, justifying its act to approach this Court directly under Article 226/ 227 of the Constitution of India without availing statutory appeal provided under section 30 of the Act, 1923. These are as under :

(a) It cannot be made a party under the Workmen's Compensation Act, 1923 and that no award can be passed against it.

(b) The petitioner cannot file appeal under the provisions of the Act, 1923.

(c) Even otherwise also, the impugned order passed by the Commissioner for Workmen's Compensation is null and void, de hors the Act.

The submissions of the petitioner - Insurance company in the written submissions, are that the provisions of the Act, 1923 are quite distinct from the provisions of the Motor Vehicles Act, 1988. Under the provisions of sections 95 and 96 of old Act 1939, statutory insurance coverage is provided for certain class of workmen involved with the use of the vehicle. Section 96 of the Old Act, 1939 provides that an insurer would be liable to satisfy an aware as a judgment debtor. It is further submitted that once the claim is made solely under the provisions of the Workmen's Compensation Act, 1923 with no involvement of the Motor Vehicles Act, no statutory liability cast upon the insurer to satisfy an award. Emphasis laid strongly that the statute Act, 1923, also does not provide for any such compulsory statutory insurance. It is further urged that the legislature has cast a statutory liability on the Insurance Company to satisfy an award only in case where there is an insolvency of the employer and in no other case. Reliance is placed on section 14 of the Act, 1923. In support of these submission, the petitioner - Insurance Company placed reliance on case law, referred therein, in the written submissions and I consider it proper to make reference to those decisions at this stage.

25. First I may make reference to the decision of the Madras High Court in the case of Charag Chemical Industries versus R.G. Ganesan, 1981 ACJ 532. The respondent, dependent of the deceased workman filed

application under section 10 of the Act, 1923 for compensation before the Commissioner of Workmen's Compensation. The appellant contested this application on the ground that it has taken insurance policies in the name of the persons working in the establishment of the appellant including deceased workman and that a sum of Rs.10,000/- had been received by the respondent as compensation from the Insurance Company for the death of the workman and having received that amount, it is not open to the respondent to claim any other compensation under the provisions of the Act, 1923. Other grounds were also raised but which are not relevant for the casein hand and hence those are omitted. Before Commissioner the appellant in that case filed an application to implead Insurance Company. On notice, the Insurance Company contested this application of the appellant, on the ground that its presence as party to the proceedings is not necessary as the claims of the party under policy had been settled and policy issued by it was not under the provisions of the Act, 1923. Ultimately, the insurance company was not impleaded as a party to the proceedings before the Commissioner. On consideration of the merits of the claim, the Commissioner of Workmen's Compensation computed Rs.9,720/- as the compensation payable by the appellant employer to the claimant. Correctness of that was challenged in the appeal by the appellant in that case before the High Court. The submission of the counsel for the appellant, in that, was that the presence of the insurance company is necessary as a party to the proceedings to secure an indemnity as otherwise, the dependents of the deceased workman, as in the present case, will be enabled to secure a double advantage, as it were to themselves arising out of the same accident, giving rise to a claim for compensation. After making reference to the provisions as contained in sections 12, 13, 14 and 19 of the Act, 1923 and considering the same, the Court thus held;

"The object of enacting section 12 appears to be to provide for cases where intermediaries between the principal and injured or deceased workman are there in the execution of work of the principal, section 12 of the Act does not appear to have any application to a case where there is no contractor or sub-contractor working under the principal. Under section 3 of the Act, 1923, the injured workman or dependents of a deceased workman can claim compensation against the employer and the question of indemnity by the insurance company to assured does not arise under

section 12(2) of the Act. The principal or contractor obliged to pay compensation to the injured workman or the dependents of the deceased workman on the application of the provisions of section 12(1) of the Act, is entitled to claim indemnity under sub-section (2) to section 12 of the Act. The immediate and actual liability to pay compensation to an injured workman is on the immediate employer of such workman and whoever pays for and on behalf of such employer by virtue of statutory provisions of section 12(1) will be entitled to be indemnified under sub-section (2) thereof."

"Section 13 enables an employer who had to pay compensation to workman or the dependents of a deceased workman under section 3 or under section 12 of the Act by way of indemnification to proceed for recovery of damages against the insurer who is liable to pay the same as per the terms of the policy to the assured. That provision does not specify any particular mode of or form for enforcing the right of the principal, contractor or the person who had to indemnify under section 12 against the third persons who is liable to pay damages. The right, therefore, recognised under section 13 of the Act can only be enforced by resort to civil proceedings. Under this section, the insurance company which is liable to pay damages in respect of any injury caused to the workman by an accident arising out of and in course his employment has to indemnify the person who had paid the compensation or had to pay indemnity under section 12 of the Act. The section by itself does not create any right in the workman or the dependents of a deceased workman to proceed for the recovery of a damage against the insurance company. May be as per the terms of the policy the insurance company is primarily liable to pay damages to the assured in respect of personal injury caused to a workman by accident arising out of and in the course of his employment. But this would not enable the appellant to claim an indemnity against the insurer by filing an application before the Commissioner under section 12(2) of the Act or otherwise."

"Section 14 provides for the contingency when the employer being becomes an insolvent or the employer being a company is in process of being

wound up. In such a situation, the rights of such employer against the insurers in respect of liability should be protected and the section provides that such rights shall be transferred to and vest in the workman. Insurer stand substituted in the place of the employer having the same rights and remedies and subject to the same liabilities of an employer. The insurer's liability, however, would be governed and restricted as per the terms of the policy. In such a case, the injured workman or the dependents of a deceased workman can have recourse directly against the insurers for the recovery of compensation due and payable by them under the Act, but only if the circumstances specified in section 14 exist, and not otherwise. Section 14 operates only when the employer becomes an insolvent or the employer, if is a company, has commenced to be wound up and in such an event, the claimants may be entitled compensation directly from the insurer, who, in the circumstances, shall stand in the shoes of the employer having the same rights and remedies and also subject to same liabilities as if it was the employer. Section 14 of the Act cannot, therefore, be invoked by the appellant to insist that the insurer must be made a party to the proceedings."

"Section 19 of the Act may next be adverted to and that requires that the Commissioner has to decide the matters or questions specified therefor. The question to be decided by the Commissioner must be one arising in any proceedings under the Act and must relate to the liability of any person to pay compensation or as to the amount or duration of compensation. Questions which would fall within the purview of the Commissioner for Workmen's Compensation for his decision are excluded from the jurisdiction of a civil court under section 19(2) of the Act. In the process of exercising the power under section 19 of the Act, the Commissioner is no doubt invested with all the powers of a civil court for the purpose of taking evidence on oath and enforcing the attendance of witnesses and compelling the production of documents, etc. Power to register agreements relating to the payment of compensation and to submit any question of law for the decision of the High Court and to review orders in appropriate cases

have been conferred. But even so, such powers do not contemplate a decision on the question of the employer securing an indemnity from the insurance company. Indeed, any amount that would be realised by the employer or the assured from the insurer by virtue of the terms of the policy cannot strictly be termed to be compensation within the meaning of the Act. The liability of the insurer to pay the amount to the assured under the policy cannot be said to arise under the provisions of this Act. Therefore, it appears that the provisions of the Act do not permit the filing of an application by the employer to implead the insurance company as a party to the proceedings in order to enable him to secure an indemnity against the insurance company. An examination of the provisions of the Act read in the light of the scheme and its intendment would disclose that in proceedings before the Commissioner of Workmen's Compensation, an employer like the appellant cannot file an application praying for impleading the insurance company with a view to secure an indemnity."

In the case before Madras High Court, the employer prayed for impleadment of the Insurance company. The employee - workman did not join the Insurance Company in the proceedings. Above that the Insurance Company paid the amount payable to the workman as compensation, as per policy. In these facts and circumstances of the case the court declined the prayer of the employer for impleadment of the Insurance Company in the proceedings.

26. In the case of National Insurance Co. Ltd., Calcutta vs. Jabunbi and others, 1984 ACJ 741, the Madhya Pradesh High Court held,

"A reading of the provisions of section 14 makes it clear that it makes provisions in case of an insolvency of an employer by giving worker the right to proceed against the insurance company in respect of liability insured by the insurance company. In view of this, the insurance company cannot be made liable unless the employers have become insolvent. In the present case, there is neither any plea nor any finding by the Commissioner that the employers have become insolvent. In view of this, no liability for payment of compensation or any part thereof would

not be fastened on the appellant - insurance company."

Facts of this case are that Abdul Sattar, late husband of the applicant - respondent no.1, Jabunbi, was in the employment of the non-applicant nos.1 and 2, who died on 24th September 1972 due to injury sustained by him during the course of his employment. The applicant (respondent no.1 herein) made an application for compensation. The Commissioner for Workmen's Compensation-cum-Labour Court, Jabalpur awarded compensation of Rs.10,000/- against respondent nos.2 and 3 and as a sum of Rs.8,000/- was already deposited by the employes, the balance of Rs.2,000/- was directed to be paid by the respondent nos.2 and 3 as well as the appellant insurance company. A sum of Rs.5,000/- was also imposed as penalty for not depositing the compensation within 30 days of the death.

27. In the case of R.B. Moondra and Company versus Bhanwari, AIR 1970 Rajasthan 111, Rajasthan High Court held that the Commissioner appointed under the Act, 1923 will have no jurisdiction to award compensation to a workman against the insurance company unless the case falls within section 14 of the Act 1923, which deals with the liability of the insurer when the employer becomes insolvent, where he has entered into a contract with any insurer in respect of any liability under this Act. It is useful to refer to the para no.18 of the text of the judgment which reads;

"As for the second contention the Act as a appears from its preamble was enacted to provide for payment by certain classes of employers to their workman of compensation for injury by accident. The term 'employer' has been defined in the Act and the insurance company does not come within the ambit of that definition. Therefore, the Commissioner appointed under the Act will have no jurisdiction to award compensation to a workman against the insurance company unless the case falls within section 14 of the Act which deals with the liability of the insurers when the employer becomes insolvent, where he has entered into a contract with any insurer in respect of any liability under this Act. Obviously, section 14 has no application in this case. Learned counsel, however, relies upon the provisions of section 96(1) and (2) of the Motor Vehicles Act. Under section 96(1) an insurer is deemed to be a judgment debtor when

> under certain circumstances a decree is passed against the insured. But it does not contemplates passing of a decree against the insurer himself. Section 96(2) provides that the insurer shall not be liable under subsection (1) unless before or after the commencement of the proceedings in which the judgment is given the insurer had notice through the court of the bringing of the proceedings or in respect of any judgment so long as execution is stayed therefore pending an appeal. These provisions, in my opinion, do not help the appellant at all in his submission that the Commissioner under the Act is authorised to pass a decree against the Insurance Company even though it was made party in the proceedings at the instance of the respondent no.1. The contention has, therefore, no force and is rejected."

On the subject the counsel for the insurance company, petitioner referred decisions of Kerala, Allahabad and Madras High Court in the written arguments. The Kerala High Court, in the judgment reported in 32 FLR 371 held that no award can directly be passed against the insurer (Insurance Company) except for cases of insolvency of the employer as envisaged by section 14 of the Act, 1923. The High Court of Allahabad, in the judgment reported in (1981) FJR 165 held that the Commissioner for Workmen's Compensation has no jurisdiction for directing payment of compensation by the insurance company with which the employer may be insured. The High Court of Madras in the case reported in AIR 1967 Madras 318, held that dispute between the employer and third party as regard indemnity claimed under section 13 also cannot be decided by the Commissioner for Workmen's Compensation as it is a Tribunal of limited jurisdiction and has no jurisdiction on matter that is not specifically provided for. The last decision relied upon by the counsel for the petitioner is the judgment of this Court in the case of the Northern India Motor Owners Insurance Co. Ltd. versus Magan Shanaji Solanki and others, 1974 ACJ 55. The point for consideration before this Court in that case was that an insurance company could never be made liable to pay any compensation and the Commissioner under the Workmen's Compensation Act had no jurisdiction to pass such order against the insurance company. After considering the scheme of the Act, 1923 and in particular the provisions, as contained, in sections 3, 12, 13, 14, 19 and 31 of the Act 1923, this Court in para no.3 of the judgment observed thus,

Para no.3 :

From the aforesaid scheme it is clear that the Workmen's Compensation Scheme provides for an absolute liability of the employer in case of accidents arising out of and in the course of the employment of the workman, the workman under section 3(5) has an alternative remedy to proceed in a civil court by way of negligence action or to proceed under the Act for recovering statutory compensation on the basis of absolute liability of the employer. Section 3(5) creates an embargo and no suit for damages shall be maintainable by a workman in a court of law in respect of any injury if he had instituted a claim to compensation in respect of the injury before a Commissioner. That is why section 19 of the act creates the Commissioner as the sole authority to determine this absolute liability of the employer under the Act, and to enforce that liability incurred under the Act and Civil Court's jurisdiction is excluded in respect of this absolute liability of the employer."

Dealing with the submission of the Insurance Company that the Civil Court's jurisdiction is excluded under section 19 and therefore, that exclusion must be strictly construed, the Court observed.

"Section 19(1) is wide enough to confer jurisdiction on the Commissioner to determine a question arising in any proceedings under the Act as to the liability of any person to pay compensation. It is not restricted only to determination of liability of employer to pay compensation, of course the liability is an absolute liability under the Workmen's Compensation Scheme which has to be determined by the Commissioner. But this liability of may be of any person. Therefore, even persons who may have to pay indemnity or who are by a legislative fiction treated as in the same position as an employer would have their absolute liability determined only by the Commissioner and to that extent jurisdiction of the civil court under section 19(2) shall be excluded. Such deeming fiction may arise under the Act or even by the subsequent Act. That would be only extending the jurisdiction of the Commissioner. This would not be because of filling up of any lacuna in the law

by the Court. The Court would be only giving effect to the avowed intention of the legislation which has conferred so wide a jurisdiction on the Commissioner and has constituted him the sole authority to determine the question of absolute liability in accident cases when the accident arose out of and in course of an employment of the workman. In case of a motor vehicle accident cases such deeming fiction may arise because of subsequent legislative scheme. Once the Parliament has legislated on this subject and has introduced statutory fiction in this Act, the Court can never lag behind the legislature by refusing to give effect to this statutory fiction so far as the Act, 1923 is concerned. We earlier pointed out sections 12, 13, and 14 while liability of persons other than the employer could be determined. In case of a contractor who was the immediate employer, if the work was ordinarily part of trade or business of the principal employer, it was the principal employer who would have to pay compensation under section 12(1) and he could claim an indemnity which would be determined by the Commissioner under section 12(2). Section 13 also provides for an indemnity being determined when the employer has been made to pay compensation in respect of an injury caused under circumstances creating legal liability of some other person than the principal employer in question. Section 14 made provision in case of an insolvency of an employer by giving worker the right to proceed against insurance company in respect of the liability ensured by insurance company. Therefore, even though the insurance company may have entered into a contract with the employer, by reason of section 14, the contract was given a statutory effect creating right in the workman of proceeding against the insurance company, and this liability can be determined by the Commissioner under the Act."

The case before this Court was arising under the Motor Vehicles Act, 1939 and question was to whether Workmen's Compensation Commissioner can proceed against the Insurance Company under the Act, 1923 or not. This Court held that the insurance company by legal fiction is a judgment debtor and statutory insurance coverage of Driver is there for employer's liability under the Act, 1923 to the employee for compensation due to injury or

fatal case. The Workmen's Compensation Commissioner has jurisdiction to pass order against the insurance company. View taken by the Rajasthan High court in the case of R.B. Moondra and Company vs. Mst. Bhanwari is contrary to the view taken by this Court in the case aforesaid. In this case the Court has considered the provisions of the section 19(1) of the Act, 1923 and observed that it is wide enough to confer jurisdiction on the Commissioner to determine a question arising in any proceedings under the Act, 1923 as to the liability of any person to pay compensation. It is not restricted only to determination of liability of employer to pay compensation. Of course, the liability is an absolute liability under the Act, 1923 and the scheme which has to be determined by the Commissioner. But this liability of any person, therefore, even persons who may have to pay indemnity or who are by a legislative fiction treated as in the same position as an employer would have their absolute liability determined only by the Commissioner and to that extent jurisdiction of the civil court under section 19(2) of the Act, 1923 shall be excluded. The learned counsel for the petitioner - Insurance Company has made an attempt to distinguish the decision of this Court in case of The Northern India Motor Owners Insurance Co. Ltd. (supra), but the reading of para no.4 of this judgment by the counsel is not wholly correct. It is not correct to submit on the part of the petitioner Insurance company, in written submissions, that this judgment has no bearing with the facts of this case in hand and the ratio of the said judgment cannot be made applicable to the facts of this case. Point in issue in the case of Northern India Motor Owners Insurance Co. Ltd., before this Court, was relating to a workman, as envisaged by M.V. Act, 1939 and injury caused to that workman due to involvement of Motor Vehicle. The point in issue in this case was not directly in issue before this court in the case of Northern India Motor Owners Insurance Co. Ltd. (supra), but a wider question as regard to the jurisdiction of the Workmen's Compensation Commissioner under section 19 of the Act, 1923 with regard to determination of liability of any person, other than employer in connection with the compensation, was there. From a perusal of the section 19(1) of the Act, 1923 it becomes obvious that the power of the Commissioner thereunder extends to the settlement of any question arising in any proceedings under the Act, 1923 as to the liability of any person to pay compensation. The insurance company (insurer) issued an insurance policy called "Workmen's Compensation Insurance" to the employer. This policy titled -

"Workmen's Compensation Insurance, Workmen's Compensation Act 1923, Indian Fatal Accident Act, 1855, Common Law."

Operative portion of such policy reads :

"NOW THIS POLICY WITNESSETH that if at any time during the period of insurance any employee in the Insured's immediate service shall sustain personal injury by accident or disease arising out of and in the course of his employment by the Insured in the business and if the Insured shall be liable to pay compensation for such injury either under THE SET OUT LAW(S) IN THE SCHEDULE
OR AT
COMMON LAW
then subject to the terms exceptions and conditions contained herein or endorsed hereon the company will indemnify the Insured against all sums for which the Insured shall be so liable and will in addition be responsible for all cost and expenses incurred with its consent in defending any claim for such compensation. PROVIDED ALWAYS THAT in the event of any change in the law(s) or the substitution of other legislation therefor this policy shall remain in force but the liability of the company would have been liable to pay if the law(s) had remained unaltered."

So under this policy the insurance company has taken the liability of the employer to pay compensation for any injury sustained by the workman by accident or disease arising out of and in the course of his employment, either under the Act, 1923 or Indian Fatal Act, 1855 or Common Law. The company will indemnify the insured against all sums for which the insured shall be so liable. The ambit of power of the Commissioner under subsection (1) of section 19 of the Act, 1923 to direct the insurance company to pay the compensation liable to be paid by the employer under the Act, 1923, to the person entitled to it, and the liability to pay such compensation by the insurance company under the insurance policy issued by it, unless a contingency covered under subsection (1) of section 14 had arisen, is point for consideration. This point has directly arisen for consideration before Division Bench of Karnataka High Court, 1986 ACJ 1079 in case of United India Fire and General Insurance Co. Ltd. versus M/s Machinery Manufacturers Corp. Ltd. and others. After considering the provisions, as contained in sections 3, 4, 4A, 14, 19

and 24 of the Act, 1923 and an earlier decision of its own, the Karnataka High Court held, that the power of the Commissioner under subsection (1) of section 19 of the Act, 1923 to settle or adjudicate upon the liability of any person to pay compensation thereunder, extends to the settlement or adjudication of insurance company's liability under a Workmen's Compensation Policy issued by it, to pay compensation for the personal injury sustained by a workman, liable to be made good by his employer insured. The Division Bench of the Karnataka High Court in Shri Ram Mining Co. v. Assistant Commissioner and Commissioner for Workmen's Compensation, ILR (Karnataka) 1981 (1) 208, on reading of subsection 19 of the Act, has interpreted thus :

"Thus, on reading section 19(1), it becomes clear that the jurisdiction of the Commissioner under the Act is not confined only against the employer. It clearly contemplates the liability of any person to pay compensation.

Again Division Bench of the same court in the case of United India Fire and General Insurance Company Limited versus Machinery Manufacturers Corporation Ltd. (supra) on reading of sections 14(1) and 19(1) of the Act, 1923 has interpreted them thus,

"Para 3 : Re.: Power of Commissioner under subsection (1) of section 19 of the Act.

Subsection (1) of section 19 of the Act reads thus:

Not taken

From a perusal of the above provisions, it becomes obvious that the power of the Commissioner thereunder extends to the settlement of any question arising in any proceedings under the Act as to liability of any person to pay compensation. But, it was contended for the appellant (insurance company) by its learned counsel, Mr. R.V. Vasantha Kumar, that the expression 'any person' used in the subsection cannot take within its ambit the insurance liable to make good compensation under the Workmen's Compensation policy issued covering the liability of the employer under the Act, to pay compensation for a personal injury sustained by him workman. This contention, in our view,

cannot be sustained for the reasons which we presently state.

Para 4 : The employer's liability to pay compensation in case of personal injury caused to a workman by accident arising out of and in the course of his employment, arises under section 3 of the Act. As to what amount of compensation is payable respecting a particular injury sustained by a workman has since been provided for under section 4 of the Act read with Schedule IV thereto, no room is left for doubt in the matter. That there should not be any delay in payment of such amount of compensation is made explicit by the provision in section 4A of the Act. Thus, it becomes clear that expeditious payment of amount of compensation liable to be paid by the employer under the act, for the personal injury suffered by a workman, is a purpose sought to be achieved by sections 4 and 4A of the Act in the interest of social security of the workman or his dependents. If the employer is entitled to recover the amount of compensation so payable to a workman or his dependents, as the case may be, from his insurer (insurance company) under an insurance policy taken by him, the question is whether such insurance company cannot be regarded as one falling within expression 'any person' under subsection (1) of section 19 of the Act against whom liability for payment of compensation could also be fastened by the Commissioner holding proceedings thereunder. If due regard is given to the purpose sought to be achieved by the aforesaid provisions of the Act, the beneficial legislation, we cannot but think that expression 'any person' used in the subsection takes within its ambit insurance company as well. Moreover, the expression 'any person' used in subsection (1) of section 19 of the Act is intended by the legislature to take within it ambit the insurance company as well, becomes clear from clue available in section 24 of the Act. That section reads.

Not taken

The expression in the above section to which we have supplied emphasis, make us think that whenever the expression 'any person' is used in the Act, the legislature has intended that expression should take within its ambit an

insurance company as well, if the context so permit.

Para 6 Re.: Scope and applicability of subsection (1) of section 14 of the Act.

Subsection (1) of section 14 of the Act reads thus,

Not taken.

The learned counsel for the appellant (insurance company) wanted us to construe the above subsection as one which makes the insurance company liable for the compensation payable by the employer under the Act for the personal injury sustained by a workman, out of and in the course of his employment, in the event of the employer becoming insolvent or making a composition or a scheme of arrangement or the employer, if the company, on the commencement of its winding upon and not otherwise. We find it rather difficult to accede to this contention.

Para 7 : From a reading of the above subsection, one could see that it provides for transferring and vesting in the workman and rights and remedies which an employer may have against the insurer under a contract of insurance for the benefit of such workman, in the event of such employer becoming insolvent or making a composition or scheme of arrangement with him creditors or, if the employer is a company, in the event of the company having commenced to be wound up, notwithstanding anything in any law for the time being in force relating to insolvency or the winding up of companies. It has to be remembered that under the law relating to insolvency or the winding up of a company, when a person becomes insolvent or the winding up of a company has commenced, all the rights and remedies of such person or company enforceable against a third party under a contract stand transferred to and vest in the Official Receiver or Official Assignee in the one case and Official Liquidator in the other. It is only to overcome such untoward consequence which may prove detrimental to the interest of workman, that a provision, as found in section 14 of the Act, is made and nothing else. To construe such a provision as one which takes away the right of

> the insured - employer to obtain indemnity under a contract of insurance, unless he becomes insolvent or makes a composition or a scheme of arrangement with his creditors or if the employer - insured is a company, unless its winding up commences, is to rad something into the provision which is alien to it. We, therefore, hold that the provision in section 14 does not enable the insurance company (appellant) to avoid its liability under a contract of insurance issued specially for covering the employer's liability to a workman under the Workmen's Compensation Act, to avoid such liability on the ground that the insured employer has not become insolvent, or made a composition or a scheme of arrangement with his creditors or being a company, the proceeding relating to its winding up has not commenced. Thus, both the conditions urged on behalf of the appellant fail."

In the case of Northern India Motor Owners Ins. Co. vs. Managan Shanaji Solanki (supra) this Court dealing with the contention of the counsel for the Insurance Company, that even after the Parliament enacted this statutory fiction in section 96(1) of M.V. Act, 1939 the liability is not altered so far as the Act, 1923 is concerned, because such a specific amendment is not made in the Act, 1923, observed in para no.7 of the judgement :

> "Such amendment was never required to be specifically made in section 19(1) of the Act because the language, as earlier pointed out, was wide enough to determine the question arising in any proceeding under that Act as to the liability of any person to pay compensation. The civil court's jurisdiction was in terms excluded under section 19(2) in respect of any question required to be determined by the Commissioner or to enforce the liability incurred under the Act."

The Workmen's Compensation Act, 1923 is to be construed in liberal manner in favour of the workman, so that the poor person can get speedy benefit and advantage of this beneficial socio-economic law. In a welfare state, a liberal interpretation, free from technicalities in favour of the workman would really accomplish the human and socio-economic purpose of legislation, which have been made and enacted for the economic need of emancipation of the labour from exploitation. The

employer had taken Workmen's Compensation Insurance, so that the poor workman, in case of injury and his dependents in case of death as a result of injury caused by an accident arising out of and in the course of his employment, can get speedy benefit and advantage of the beneficial socio-economic law. This policy was taken by the employer for the benefits of the workman. The workmen are the beneficiaries under the Workmen's Compensation Insurance taken by the employer. The employer had taken all care and caution and ensured the workmen that in case any personal injury is caused to any of them by accident arising out of and in the course of his employment, he or his dependents, as the case may be, will get the compensation from the insurance company. Technically speaking it may be contract in between the employer and insurance company, but it is for the benefit of the workmen. The workmen are not directly one of the contracting party to the Workmen's Compensation Insurance, but the intentment, object and purpose of taking of this insurance by the employer was to provide a direct source to the workman or his dependents to get the compensation in accordance with the provisions of the Chapter II of the Act, 1923, if personal injury is caused to him in an accident arising out of and in the course of his employment, from the insurer. A generous humanitarian approach is therefore, needed both by the courts and the state in implementation of such workmen welfare legislation for giving the speedier and cheaper relief to that class. It is of utmost importance, that neither the state nor judicial or quasi judicial officer, should treat such cases as cases of contracts or mortgages, pre-emption or the easements, but appreciate the legislative intent to provide relief to workmen. For that only anxiety of court should be that substantial justice, real justice, speedy justice and effective justice should be imparted and administered to them and no technicalities or rules of procedure should come in the way. If that is not done, the very object of such workmen legislation would be defeated. Since the Act, 1923 is a welfare legislation, it is generally expected that its provisions would receive liberal interpretation so as to advance the object and purpose of the Act. In the Act, 1923 or the rules framed thereunder "Any person" has not been defined. The work "any" has the following meaning :

> some; one of many; an indefinite number. One indiscriminately of whatever kind or quantity.

Word 'any' has a diversity of meaning and may be employer to indicate "all" or "every" as well as "some"

or "one" and its meaning in a given statute depends upon the context and the subject matter of the statute. It is often synonymous with "either", "every" or "all". Its generality may be restricted by the context.

"Any" - adj. one, one or more, some, is there any reason for it? We found hardly any mushrooms // every, whichever, you care to choose, any policeman will tell you // unlimited, you can invest any amount sing. and pl. pron - any person or thing, any persons or things. (Webster's Dictionary, 1990 Edition).

"Any" - one, a, an, or some, one or more without specification or identification, every, all, an unspecified person or persons; anybody.

[The Random House Dictionary, College Edition].

Social Welfare and beneficent statute should receive liberal and beneficent construction. If the Act is meant for the public good then the every provision thereof must receive fair and liberal construction. It must be construed with vision to ensure the achievement of the object of the Act. In the case of National Textile Worker's Union vs. P.R. Ramakrishnan, AIR 1983 SC 75, the Hon'ble Supreme Court observed that the benevolent provisions should be construed taking into consideration dominant purpose of the statute, intention of legislature and underlying policy, where statute does not expressly confer a right to the workmen but does not indicate any negative intendment either, statute must be construed in the interest of the workmen. The Act, 1923 is socially beneficent statute. Section 19(1) of the Act, 1923 is being benignant provision, must receive a benignant construction and even if two interpretations are permissible that which furthers the beneficial object should be preferred. Normally, legislative intent to be gathered from plain meaning of the statute but where the language is capable of two constructions that which enlarges protection of a socially beneficent statute and which accords with reasons and justice must be preferred. Construction of a provision leading to patent injustice, inconvenience and inequity should be avoided. Similarly, construction of a provision which is just and equitable, furthers the purpose intended to be fulfilled and facilitates in solving the problems be preferred. The Hon'ble Supreme Court while considering the "Equity of the Statute" rule of construction of a statute in the case of Babaji Kondaji Garad versus Nasik Merchants Coop. Bank Ltd., AIR 1984 SC 192 observed.

"In the past a method of construction was to extend a remedial statute called proceeding upon 'the equity of the statute'. In Hay vs. Lord Provost of Perth, (1863) 4 Macg. HL (SC) 535, Lord Westbury observed that the mode of construction known as 'the equity of the statute' was "very common with regard to our earlier statutes, and very consistent with the principle and manner according to which Acts of Parliament were at that time framed." Undoubtedly, nowadays this mode of construction has fallen into disuse. Even though the expression 'the equity of the statute' has fallen into disuse, it is still in vogue in some what similar form in that if it is manifest that the principles of justice requires something to be done which is not expressly provided for in an Act of Parliament, a court of justice will take into consideration the spirit and meaning of the Act apart from the words. In this context, one can recall the words of Jessel M.R. In Re Bethlem Hospital, (1875) LR 19 Eq 457; 23 WR 644 : 44 LJ Ch. 406, that 'the equity of the statute' may as well mean "such a thing as construing an Act according to its intent, though not according to its words."

The use of the words "any person" in section 19 of the Act, 1923 demonstrates that the Commissioner's jurisdiction to determine the liability of paying compensation is not confined to the liability of an employer. This liability may of any person. Therefore, even person who may have to pay, indemnify or who may be placed on par with the employer as a result of legislative fiction come within the ambit of section 19 and, therefore, their liability has to be determined by the Commissioner. Section 19 has advisedly used such wide language as to embrace the determination of various kinds of liabilities and not merely the liability of an employer arising purely under the Act. The entire gamut of liabilities is covered by the jurisdiction of the Commissioner under section 19.

28. Section 147 of the Motor Vehicles Act, 1988 (Old section 95 of Act, 1939) provides for requirements of policies and limits of liability. This section reads thus;

Section 147 : (1) In order to comply with the requirements of this chapter, a policy of

insurance must be a policy which -

(a) is issued by a person who is an authorised insurer; and

(b) insures the person or classes of persons specified in the policy to the extent specified in subsection (2) -

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place.

Provided that a policy shall not be required -

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923) in respect of the death of, or bodily injury to, any such employee,

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as a conductor of the vehicle or in examining tickets of the vehicle, or

(c) if it is a goods carriage, being carried in vehicle, or

(ii) to cover any contractual liability.

So far this Court is concerned it is no more res integra that the Workmen's Compensation Commissioner has jurisdiction to pass a decree against insurance company in respect of claim of Compensation under the Act, 1923

of the class of employees of insured fall under section 147 of the Motor Vehicles Act, 1988 (Old section 95 of the Motor Vehicles Act, 1939. [See Northern India Motor Owners Ins. Company vs. Magan Shanaji Solanki (supra)]. A reading of section 147 of the M.V. Act, 1988 clearly shows that it is within the contemplation of the statute that a third party insurance should cover a liability that might arise out of Act, 1923. Under the Act, 1923, a liability might arise even though the accident took place in the factory premises/ site, a private place, so long that accident took place in the course of employment, the insurance company is liable to indemnify the liability of insurer in respect of the death of or bodily injury to, any such employee, if it is a goods carriage, being carried in the vehicle, though the accident took place in the factory premises, if the death or bodily injury is caused to the employee (workman) by accident arising out of and in the course of his employment. So in a class of workmen there will be a classification in the matter of claim of compensation under the Act, 1923 against the insurance company in case of death of or bodily injury to a workman, caused by an accident arising out of and in the course of his employment. In the case of a workman, who was carried in goods carriage vehicle, insured, either at the factory premises or public place, in respect of death of or bodily injury to him in the course of the employment, caused in an accident claim of compensation can be made against the insurance company under the Act, 1923 and Workmen's Compensation Commissioner has jurisdiction to pass decree (award) in such case against the insurance company. But converse to it, in case of that very workman, in case of his death of, or bodily injury to him, at factory premises, caused in an accident arising out of and in the course of his employment, claim of compensation under the Act, 1923, against the insurance company will not be maintainable, though he is covered under the Workmen's Compensation Insurance policy taken by the employer. It is a cardinal principle of interpretation of the statutes that a construction to a provision leading to absurdity, injustice, inconvenience or anomaly should be avoided. Therefore, there is no reason why the expression "any person" used in section 19(1) of the Act, 1923 should be interpreted in such a restricted sense as to exclude insurance company. In case expression 'any person' used in section 19(1) of the Act, 1923 is interpreted in such a restricted sense as to exclude insurance company, it will result in a hostile discrimination in a class itself.

So it is not correct to urge by the petitioner

insurance company that it could not be made party under the Act, 1923 and that no award could have been passed against it by the Workmen's Compensation Commissioner in the present case. As held by this Court in Norhtern India Motor Owners Ins. Co. vs. Magan Shanaji Solanki (supra) the section 19(1) of the Act, 1923 is wide enough to confer jurisdiction on the Commissioner to determine a question arising in any proceeding under the Act as to liability of any person to pay compensation. It is not restricted only to determine of liability of employer to pay compensation. This liability may be of any person. Therefore, even persons who may have to pay indemnity or who are by a legislative fiction treated as in the same position as an employer would have their absolute liability determined only by the Commissioner and to that extent jurisdiction of the Civil Court under section 19(2) shall be excluded, such deeming fiction may arise under the Act or even by any subsequent Act. That would be only extending the jurisdiction of the Commissioner. This would not be because of filling up of any lacuna in the law by the Court. The Court would be only giving effect to the avowed intention of the legislation which has conferred so wide a jurisdiction on the Commissioner and has constituted him sole authority to determine and has constituted him sole authority to determine the question of absolute liability in accident cases when the accident arose out of and in the course of an employment of the workman.

29. The petitioner insurance company was party to the proceedings under the Act, 1923 and award has also been made by the Workmen's Compensation Commissioner against it in the present case, it has right of appeal under section 30 of the Act, 1923. Learned counsel for the petitioner insurance company failed to make out any case how the appeal in the present case could not be filed by the company.

Hence I am clearly of the view that the jurisdiction of the Workmen's Compensation Commissioner under section 19(1) of the Act, 1923 to settle or adjudicate upon the liability of any person to pay compensation thereunder, extends to the settlement and adjudication of insurance company's liability under a Workmen's Compensation Insurance issued by it, to pay compensation for death of or the personal injury sustained by a workman by accident arising out of and in the course of his employment, liable to be made good by the employer insured.

30. Now I may refer the decision of the Honourable

Supreme Court in Durga Prasad versus Navin Chand, JT 1996 (3) SC 564. The respondent in this case has filed a suit for specific performance and after the evidence of the appellant was closed, the respondent seemed to have declined to contest the suit and sought adjournment. The application for adjournment was rejected and after hearing arguments, judgment was reserved and pronounced on 14.1.1994. Respondent made an application on 27.1.1994 to set aside the decree under order 9, rule 13 CPC. Similar application was filed by other respondents. While that application was pending, the appellant moved an application objecting to the maintainability of the application and to hear it as a preliminary point. That application came to be dismissed by the trial court on 7.10.1995. Against that order, the appellant filed writ petition under Art. 226 of the Constitution and that was dismissed. The appellant challenged the order of the High Court before Hon'ble Supreme Court. The Hon'ble Supreme Court observed :

"The impugned order is not appealable one either under order 43, rule 1 read with section 104 CPC or 96 CPC. But still a revision would be maintainable and whether the order could be revised or not is a matter to be considered by the High Court on merits. But instead of availing of that remedy, the appellant has invoked jurisdiction under Art.226 which is not warranted and procedure prescribed under the CPC cannot be bypassed by availing of the remedy not maintainable under Art.226. Under these circumstances, we decline to interfere with the order. It is open to the appellant to avail of such remedy as it is open under law."

Here I think it proper to refer four judgments of Honourable Supreme Court, delivered by five Judges' Bench. The first case in the series is K.S. Rashid and son vs. Income Tax Investigation Commissioner and others, AIR 1954 SC 207 arising out of the proceedings under the Taxation of Income (Investigation Commission) Act, 1947. The aforesaid act which was special in nature, provided sufficient remedies for any breach of or violation of the provisions of the Act and the writ petition filed by the petitioner in the aforesaid case was dismissed on the preliminary objection raised by the respondents. One of the preliminary objections raised was that since the petitioner had remedies under the Act, the remedy under Articles 226 or 227 of the Constitution was not available. In appeal dismissal of the writ

petition by the High Court was upheld by the Honourable Supreme Court, observations of the Court thus,

"For the purpose of this case it is enough to state that remedy provided for in Article 226 of the Constitution is a discretion remedy and the High Court has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere."

The next case is, Union of India versus T.R. Verma, AIR 1957 SC 882. In this case the service of the respondent was terminated and the writ petition filed by him was allowed by the High Court. In appeal filed by the Union of India, the judgment of the High Court was set aside on the ground of availability of alternative remedy and in this connection, I would like to refer to the following observations made by the Apex Court :

"It is well settled that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of another remedy does not affect the jurisdiction of the court to issue a writ; but, as observed by this Court in Rashid Ahmed versus Municipal Board, AIR 1950 SC 163, the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs. And where such remedy exists, it will be a sound exercise of discretion to refuse to interfere in the petition under Article 226, unless there are good grounds therefor."

Next case is State of U.P. versus Mohammed Nooh, AIR 1958 SC 86. In this case, the Honourable Supreme Court has observed that ;

"the fact that the aggrieved party has another and adequate remedy may be taken into consideration by the superior court in arriving at a conclusion as to whether it should, in exercise of its discretion, issue a writ of certiorari to quash the proceedings and decision of inferior courts subordinate to it and ordinarily the superior court will decline to

interfere until the aggrieved party has exhausted his other statutory remedies, if any."

The last case is Basant Kumar Sarkar and others versus Eagle Rolling Mills Limited and others, AIR 1964 SC 1260, which related to industrial dispute and it is advantageous to briefly refer to the facts of that case. The workmen of Eagle Rolling Mills Ltd., Kumardhubi Eng. Works Ltd., and Kumardhubi Fire Clay and Silica Works Ltd. challenged the validity of section 1 (3) of E.S.I. Act, 1948 before the High Court, on the ground that this section was violative of Article 14 of the Constitution and suffers from the vice of excessive delegation. It appears that certain notices were issued to the workmen curtailing their benefits. The validity of the said provision was upheld by the Honourable Supreme Court, but the court held that the proper course for the workmen was to challenge the notices and circulars under section 10 of the Industrial Disputes Act or under sections 574 and 75 of the Act. In this connection it is better to refer the observations of the Honourable Supreme Court;

"Before we part with these appeals, there is one more point to which reference must be made. We have already mentioned that after the notification was issued under section 1(3) by respondent no.3 appointing August 28, 1960 as the date on which some of the provisions of the Act hold come into force in certain areas of the State of Bihar, the Chief Executive Officer of respondent no.1 issued notices giving effect to the State Government's notification and intimating to the appellants that by reason of the said notification, the medical benefits which were being given to them in the past would be received by them under the relevant provisions of the Act. It was urged by the appellants before the High Court that these notices were invalid and should be struck down. The arguments which was urged in support of this contention was that the respondent no.1 in all the three appeals were not entitled to curtail the benefits provided to the appellants by them and that the said benefits were not similar either qualitatively or quantitatively to the benefits under the scheme which had been brought into force under the Act. The High Court has held that the question as to whether the notices and circulars issued by the respondent no.1 were invalid, could not be considered under Art.226 of the Constitution, that is matter which can be appropriately raised

in the form of a dispute by the appellants under section 10 of the Industrial Disputes Act. It is true that the powers conferred on the High Court under Article 226 are very wide, but it is not suggested by Mr. Chatterjee that even these powers can taken in within their sweep industrial disputes of kind which this contention seeks to raise. Therefore, without expressing any opinion on the merits of the contention, we would confirm the finding of the High Court that the proper remedy which is available to the appellants to ventilate their grievance in respect of the said resource to section 10 of the Industrial Disputes Act or seek relief, if possible under sections 74 and 75 of the Act."

In Champalal Binani versus C.I.T. West Bengal, 1971 (3) SCC 20, the Honourable Supreme Court observed that when remedy is provided under the Income Tax Act a writ petition under Art.226 is not maintainable. The Income Tax Act provides a complete and self contained machinery for obtaining relief against improper action taken by the departmental authorities and normally the party feeling himself aggrieved by such action cannot be permitted to refuse to have recourse to that machinery and to approach the High Court directly against that action. The same view has been taken by the Honourable Supreme Court in the case of Assistant Collector vs. Dunlop India Ltd. A.I.R 1985 SC 330, as follows :

Art.226 is not meant to short circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill suited to meet the demands of extraordinary situations, as far instance where the very vires of the statute is in question or where private and public wrongs are so inextricably mixed up and the prevention of public injury and indication of public justice requires it that recourse may be had to Art.226 of the Constitution, but then the Court must have good and sufficient reasons to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters."

In the case of Titigarh Paper Mills Co. Ltd. versus State of Orissa, AIR 1983 SC 603, Honourable Supreme Court observed;

"It is now well recognised that where a right or liability is created by a statute, which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of."

In M/s George Peter (C) vs. Its Workman, 1962(1) LLJ 484, a writ of certiorari was filed against the order of the Payment of Wages Authority, whereby the authority allowed the claim of the applicants holding the company liable on account of the claims to pay Rs.21,474-2-6. The company instead preferring an appeal under section 17 of the Payment of Wages Act filed a writ petition in the Kerala High Court. A Division Bench of Keralal High Court held that in view of the alternative remedy available to the petitioner, a writ of certiorari was not maintainable. It was observed that failure to file an appeal under section 17 of the Payment of Wages Act precludes the employer from claiming the discretionary relief under Art.226 of the Constitution. A Division Bench of Kerala High Court again considered the question of alternative remedy in a case under the Payment of Wages Act in R.N. Shenoy versus Central Bank of India, 1984 Lab. I.C. 1493, wherein deductions in wages were challenged. The Court held that the writ petition was not maintainable, as efficacious remedy of appeal was available to the petitioner. It has further been observed that if individual employees are permitted to flood this court with such petitions, that would not only make the mechanism provided under the Payment of Wages Act for such purposes ineffective but also result in the abuse of the writ jurisdiction of this Court.

In Piara Singh vs. Commissioner, Workmen's Compensation under Workmen's Compensation (Sr. Sub. Judge), Patiala and another, 1987 Lab. I.C. 818, a writ of certiorari was filed by the employer before Punjab and Haryana High Court against the award of the Workmen's Compensation Commissioner, under which Rs.5643.20 was awarded under the Workmen's Compensation Act, 1923 to the workman for the injuries received by him while working as employee of the petitioner, though there was a right of appeal against the impugned award under the Act, 1923 but the payment of the compensation awarded is a condition precedent for the entertainment of appeal. The learned counsel who was appearing in that for the petitioner relying on the S.B. decision of the very court in the case of Baru Ram versus Labour Officer, 1983 (85) Pun. L.R. 317 (1984 Lab. I.C. 80) contended that as the

deposit of the compensation amount was a condition precedent, remedy of the appeal cannot be said to be an adequate alternative remedy. The learned counsel in that case relied on the following observation of the court in the case of Baru Ram (supra).

"It has been held in Himmatlal Harilal Mehta's case (supra) (Himmatlal Harilal Mehta versus State of Madhya Pradesh, AIR 1954 SC 403) that the principle that a court will not issue a prerogative writ when an adequate alternative remedy was available could not apply a party has come to the court with an allegation that his fundamental right had been infringed and sought relief under Art.226. Moreover, the remedy provided by the Act is of an onerous and burdensome character and before the appellant can avail of it he has to deposit the whole amount of tax, such a provision can hardly be described as an adequate alternative remedy. The ratio of this authority is applicable to the case under consideration and the writ petition cannot be dismissed on the ground that the petitioner can avail of alternative remedy of appeal under s.30 of the Act."

Division Bench of the Court in the case of Piara Singh vs. Commr., Workmen Compensation (supra) held thus;

"On none of the two reasons given the rule laid down by the learned Single Judge can be sustained.

Even the learned counsel for the petitioner did not subscribe to the view that infringement of any fundamental right would be involved in cases of grant of compensation under the Act. So far as the other reason is concerned the matter stands concluded by the decision of the Supreme Court in Sales Tax Officer, Jodhpur versus Shiv Ratan G. Mohatta, AIR 1966 SC 142 where a similar contention was turned down in the following terms :

"We are of the opinion that the High Court should have declined to entertain the petition. No exceptional circumstances exist in this case to warrant to exercise of the extraordinary jurisdiction under Art.226. It has not

> been object of Art.226 to convert High Court into original or appellate assessing authorities whenever an assessee chose to attack an assessment order on the ground that a sale was made in the course of import and therefore, exempt from tax. It was urged on behalf of the assessee that they would have had to deposit sales tax while filing an appeal. Even if this so, does this mean that in every case in which the assessee has to deposit sales tax, he can bypass the remedies provided by the Sales Tax Act? Surely not. There must be something more in a case to warrant to entertainment of a petition under article 226 something going to the root of the jurisdiction of the Sales Tax Officer, something to show that it would be a case of palpable injustice to the assessee to force him to adopt the remedies provided by the Act."

Consequently, the simple fact that the compensation awarded has to be deposited before an appeal can be entertained, would furnish no ground to entertain the writ petition bypassing the statutory remedy of appeal. Moreover, the Workmen's Compensation Act is a welfare legislation meant to provide speedy remedy to the workmen in case of injuries received by them in the course of their employment. The legislature in its wisdom has laid down that the workmen must get the compensation awarded before the matter is allowed to be taken up in appeal by the employer. The entertainment of the petition under Art.226 of the Constitution would obviously defeat the intent and purpose of the legislation and it would be only in rare and exceptional cases where the order on the face of it shows violation of some statute or inherent lack of jurisdiction that the Court would be justified in entertaining the petition under Art.226 of the Constitution bypassing the statutory remedy. We are, therefore, of the considered opinion that the decision in Baru Ram's case (supra) (1984 Lab. I.C. 80) was not correctly arrived at and overrule the same.

As in the present case no exceptional circumstance has been shown apart from the fact

that the compensation awarded has to be deposited before the appeal can be maintained, we find no reason to entertain this petition which is accordingly dismissed with costs and the petitioner relegated to the ordinary remedy under the Act."

In the case of P.L. Pillaichamy versus Union of India, 1991 Lab. I.C. 304, the Madras High Court observed;

"The impugned order dated 25.11.1988 passed by the second respondent has upheld the claim of the third respondent herein for payment of compensation as the dependent of the deceased worker. An appeal lies against the said order under section 30(c) of the Workmen's Compensation Act, 1923. The affidavit of the petitioner does not refer to the existence of the statutory remedy by way of appeal; nor does it explain as to why that remedy was not resorted to by the petitioner. There is no averment in the affidavit that the statutory appeal is not efficacious or it is too dilatory to grant quick relief to the petitioner herein. The Supreme Court has held in the Assistant Collector of Central Excise vs. J.H. Industries, AIR 1979 SC 1889, that unless the alternative remedy is not efficacious or is too dilatory to grant quick relief to the petitioner, the jurisdiction under Art.226 of the Constitution shall not be invoked. Hence this writ petition is not maintainable, as the petitioner has got an alternative remedy by way of an appeal under section 30(c) of the Act."

In Shushma Lata versus Motor Accident Claims Tribunal, Jaipur and others, 1989 ACJ 352, the Rajasthan High Court held;

"We find that under section 110-D of the Motor Vehicles Act an appeal lies to this court against the said award and the period of limitation for filing the said appeal is 90 days. Certified copy of the award filed with the writ petition shows that the petitioner had submitted an application for grant of certified copy of the award on 17th March 1986 and the said certified copy was ready for delivery on 2nd April 1986. If the time taken in obtaining the certified copy

of the award is taken into consideration, period of limitation for filing the appeal under section 110-D of the Motor Vehicles Act had expired long before the petitioner has approached this Court by filing this writ petition on 15th July 1986. In other words the petitioner has approached this Court by filing the writ petition after period of limitation for filing appeal against the said award had expired. In our opinion the petitioner cannot be permitted to invoke jurisdiction of this court under Article 226 of the Constitution when remedy of appeal under section 110-D of the Motor Vehicles Act was available to her and she failed to avail the said remedy by filing appeal within the prescribed period of limitation."

In the case of Managing Director, J & K PCC versus Commissioner for Workmen's Compensation, 1992 ACJ 362, the High Court of J & K held ;

"In view of the above discussed facts and circumstances there was hardly any reason or ground for the petitioner to invoke writ jurisdiction of this Court under Article 226 of Constitution of India when remedy of appeal under the Act was available to him where the points canvassed before this Court could have been adequately agitated. The petitioner in order to overcome the period of limitation and also to evade deposit of awarded amount carved out an excuse by filing the present petition."

Their Lordships of the Supreme Court have dealt with the point regarding availing of the remedy under Article 226 of the Constitution of India in case reported as Baburam Prakash Chandra Maheshwari vs. Antarim Zila Parishad, A.I.R. 1969 SC 556. It has been held in this case that when alternative and equally efficacious remedy is open to a litigant he should be required to pursue that remedy and not invoke special jurisdiction of the High Court to issue a writ. It has further been laid down in the said judgment that existence of a statutory remedy did not affect the jurisdiction of the High Court to issue a writ, but the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writ, and where such remedy exists it will be sound exercise of discretion to refuse to interfere in a writ jurisdiction unless there are good grounds therefor. Their Lordships have, however,

referred to two well recognised exceptions to the above doctrine with regard to exhaustion of statutory remedy first out of which is that where proceedings are taken before a Tribunal under a provision of law, which is ultra vires, it is open to a party aggrieved thereby to move the High Court under Article 226 for issuing appropriate writ and in the second place the doctrine has no application in a case where the impugned order has been made in violation of principles of natural justice. The case of the petitioner - Insurance Company does not fall in any of the two exceptions carved out by their Lordships of Supreme Court in the case of Baburam Prakash Chandra Maheswari (supra) to entertain the writ petition directly under Article 226 of the Constitution by passing the statutory remedy of appeal, against the impugned order. In view of the above discussed facts and circumstances there was hardly any reason, ground or justification for the petitioner - Insurance Company to invoke extraordinary writ jurisdiction of this Court under Art.226 of the Constitution when remedy of appeal under section 30 of the Act, 1923 was available to it where the points canvassed before this Court could have been adequately agitated. In none of the Special Civil Applications, the petitioner Insurance Company has not filed the certified copy of the order of the Workmen's Compensation Commissioner impugned therein. If we go by the date of the impugned order, date of filing of the Special Civil Application before this court and limitation prescribed for appeal under section 30 of the Act, 1923, it appears that the petitioner - Insurance Company in order to overcome the period of limitation and also to evade deposit of awarded amount carved out an excuse by filing these petitions. Section 14 of the Act, 1923, on the terms of which the point of jurisdiction is urged, by the counsel for the petitioner - company, was understood as excluding the insurer from liability to employees under the Act, 1923, except in a case where the employer became insolvent or made or composed the scheme of arrangement with its creditors, or winding up proceedings were commenced in cases where the employer was a company. In the facts as discussed above and the position of law as emerges from the decisions of the different High Courts and this Court, it is not correct to contend on the part of the petitioner Insurance Company that the Workmen's Compensation Commissioner was altogether inherently lacking jurisdiction to pass the award of compensation in favour of workman respondent, herein, under the provisions of the Act, 1923. Moreover, this point could have been conveniently raised by the petitioner - Insurance Company in the appeal provided under section 30 of the Act, 1923. The petitioner has

walked under misconception or the court is inherently lacking jurisdiction, though the appeal is provided against the impugned award or order, same is not maintainable. If the authority has no jurisdiction in the matter and it proceeded and ultimately passed a decision against the party, the party concerned can challenge the aforesaid order/ judgment or award of the said authority on all grounds inclusive of lack of jurisdiction in an appeal provided against the said order/ judgment or award under the statute. None of the reasons given by the petitioner - Insurance Company to justify its action of bypassing and circumventing the efficacious alternative remedy of appeal provided under section 30 of the Act, 1923, against the impugned award or order, stands to any logic or justification. Moreover, the petitioner could have challenged the claim of compensation lodged by the workman or his dependents, as the case may be, before the Workman's Compensation Commissioner, may be on all the grounds available to the employer. In the case before the Workmen's Compensation Commissioner the claim of the workman or his dependents, of compensation for injury caused in an accident arising out of and in course of his employment, other than the workman covered under the statutory insurance policy, to be taken by the employer, as provided under the Motor Vehicles Act, 1988, the defence may not be restricted like in the case of Motor Vehicles Accident Claims case. It goes without say that the Act, 1923 is a benevolent piece of legislation and the Workmen's Compensation Insurance is being taken by the employer so that in case of accident of a workman arising out of and in course of his employment, he may get the compensation for injury caused or his dependents on his death, immediately. Undisputedly the petitioner insurance company under the Workmen's Compensation Insurance, taken by the employer, is under obligation to indemnify for the amount of compensation awarded to the workman or his dependents, as the case may be, for injury caused in an accident arising out of and in the course of employment. The contention of the counsel for the petitioner is accepted and it is held that the Workmen's Compensation Commissioner, though the employer has taken the Workmen's Compensation Insurance, in the claims case no award can be made against the insurance company, an anomalous situation will arise. The award made against the employer by the Workmen's Compensation Commissioner is not questionable by either of the parties to the claim case, as well as by the third party, may be insurance company, in the civil court. The employer has to go for long drawn civil litigation to get the amount of compensation, awarded against him by the Workmen's Compensation Commissioner in

favour of the workman or his dependents, as the case may be, from the insurance company. A second litigation, where the insurance company cannot question the validity and correctness of the award of the Workmen's Compensation Commissioner made in favour of the workman or his dependents, as the case may be and against the insured, where the employer, for any just and probable reason, unable to pay immediately the amount of compensation to the claimant or claimants, then the claimant or claimants have to wait for the payment of the amount till the employer gets the amount reimbursed from the insurance company after long drawn civil litigation is decided in his favour by the court. In that case, I fail to see what defence can be taken by the Insurance Company, in the civil suit, to defend the claim of the employer of indemnity of the amount of compensation to be paid by it to the workman or his dependents, as the case may be, awarded under the provisions of the Act, 1923. Contrary to it, before the Workmen's Compensation Commissioner, the Insurance Company take all legitimate defences both of law and facts which are available to the employer. As observed earlier in these proceedings, except in case of statutory policy under the Motor Vehicles Act, it may be open to the Insurance Company to take all the defences which are otherwise may not be permissible to it in the case of Motor Vehicles Accident Claims, where the statutory defences are only open to it. It is in larger interest of the Insurance Company also to get itself impleaded as a party in the claims case where it is not impleaded or to contest the case on merits where it is impleaded as a party. It is immaterial whether the workmen or his dependents implead it as a party or on the request of the employer it has been impleaded as a party to the claims proceedings. Here is the case where all the dispute inter se the employer (insured) and insurance company (insurer) are also to be adjudicated and decided and the Workmen's Compensation Commissioner will pass an effective and fruitful award or order. These broader principles, aspects and benevolent nature of the Act, 1923 need to be considered and court should interpret the provisions of sections 14 and 19 of the Act, 1923 in a manner to advance and to cause justice to the beneficiaries of the benevolent piece of legislation. Otherwise also, this plea taken by the petitioner insurance company is nothing but only a technical plea without there being any ultimate immunity from indemnifying the amount of compensation awarded to the workman or his dependents as the case may be, covered under the policy. Workmen's Compensation Act is a welfare legislation and when it provides a right of appeal with a condition, then the such a provision cannot

be held to be inadequate right of appeal. It may further be observed that a businessman who is running an industry or a factory or an establishment is supposed to regulate his business in a manner so that he may comply with the statutory provisions of law and, whenever contingency may arise may discharge his obligation under the statute. Any liability arising in the course of and out of employment may be safeguarded by having a policy of insurance covering such a risk insuring the workmen working in the industry or factory or establishment. A prudent businessman is supposed to take such steps so that in the event of accident he may keep the risk covered by virtue of Workmen's Compensation Insurance. In the premises aforesaid, I am of the opinion that all the question raised in these Special Civil Application can be effectively adjudicated upon in a appeal filed against the impugned order passed by the Workmen's Compensation Commissioner under the Act, 1923, which lies to this court on substantial questions of law. Further no relief has been sought in these petitions for the enforcement of the fundamental right and that permitting the employer litigants to come to this court to avoid exhaustion of remedy under the Act, 1923 would make the mechanism provided under the Act, 1923 completely ineffective and the result is the abuse of the writ jurisdiction of this Court and further the Act, 1923 being a beneficial legislation and the provisions of section 30 of the Act, 1923 is not only mandatory but is salutary providing a right of appeal circumscribed by the condition of deposit of amount of compensation for the security of the workman for good reasons, and that proceedings under Article 226 of the Constitution are no substitute for ordinary remedies.

31. The petitioner - insurance company in these cases has not seriously and effectively pressed the point of jurisdiction before the Workmen's Compensation Commissioner. Though in the written statements filed by the petitioner - insurance company, the point of jurisdiction has been raised, but it has not been pressed, as the petitioner - insurance company has not got the issue framed on this question. The issues were framed after filing of the written statements by the petitioner - insurance company and issue of jurisdiction was not framed by the Workmen's Compensation Commissioner but the petitioner - insurance company did not move any application also at any stage thereafter to get framed issue on the question of jurisdiction of Workmen's Compensation Commissioner to pass the award in these matters against it.

Rule 27 of the Gujarat Workmen's Compensation Rules, 1967 gives a right to the opposite party, herein the petitioner - insurance company, which admittedly was a party to the claim cases before the Workmen's Compensation Commissioner, for filing of the written statements. Rule 28 of the Rules 1967 makes a provision for framing of the issues. The Commissioner after considering the written statements and the record of the examination of the parties, should ascertain upon the material proposition of fact or law to which the parties are at variance and shall thereupon proceed to frame and record the issues upon which the right decision of the case appears him to depend. This rule further provides that while framing the issues, the Workmen's Compensation Commissioner shall distinguish between those issues which in his opinion relate to question of fact and those which relate to the question of law. Rule 29 of the rules further provides for the postponement of trial of issues of fact where the Commissioner is of the opinion that the case may be disposed of on the issues of law only. Rule 32 provides for recording of findings by the Commissioner on each issue, framed. After having a glance to the scheme of the Rules, 1967, the issue of jurisdiction is a question of law and the petitioner - insurance company should have pressed for the framing of the said issue. Though the issue has to be framed on the basis of the pleadings of parties, but if the party concerned has not pressed for framing of the said issue then it is a case where necessary inference follows therefrom that the party has not pressed the plea of jurisdiction. The matter would have been different where the petitioner would have pressed for framing of the issue of jurisdiction, and the Workmen's Compensation Commissioner would have declined to frame the same. At no point of time after framing of the issues and till the decision of the claim cases by the Workmen's Compensation Commissioner, the petitioner - Insurance Company has filed any application for framing of the issue on the question of jurisdiction. Rule 29 of the Rules, 1967 provides that the Workmen's Compensation Commissioner may postpone the trial of the issues of fact where the issue of law has been raised and on which the case may be disposed of. The petitioner - insurance company despite of this specific provision, has not made an application for framing of the issue of jurisdiction as well as has not pressed before the Workmen's Compensation Commissioner for deciding such issue as a preliminary issue. The issue of the jurisdiction should have been raised and where the issue has not been framed despite of raising of the same in the written statement, the petitioner insurance company should have been prayed for

framing of the same at the earliest opportunity, and that opportunity was immediately after framing of the issues. The petitioner - insurance company has permitted the Workmen's Compensation Commissioner to proceed with the trial of the issues and to give the decision on merits. Only when the decision has been given on merits against the petitioner - insurance company, the issue of jurisdiction has been raised by it by filing this Special Civil Application before this court. The petitioner insurance company, in these facts as discussed above, waived the plea of the lack of jurisdiction of the Workmen's Compensation Commissioner to pass the award against it. The petitioner - insurance company now cannot be permitted to raise this issue before this Court under Article 226 of the Constitution. The petitioner insurance company has not considered it to be a real case of lack of jurisdiction, otherwise, it should have pressed for the framing of this issue before the Workmen's Compensation Commissioner. In most of the cases, the petitioner - insurance company has also not produced any evidence. So present is the case, where though in pleadings, the plea of jurisdiction has been raised, but the petitioner - insurance company neither prayed for framing of the issue on the question of jurisdiction as well as in most of the cases has not produced any evidence also. So on this ground the plea raised by the petitioner - insurance company regarding lack of jurisdiction of the Workmen's Compensation Commissioner to pass award against it in these present cases, cannot be permitted to be raised.

The extraordinary jurisdiction of this Court under Article 226 of the Constitution, which is of a discretionary nature and is exercised only to advance the interest of justice cannot certainly be employed in aid of the petitioner - insurance company who has not thought of the point of jurisdiction worth of any substance and consideration before the Workmen's Compensation Commissioner. Article 226 of the Constitution of India is designed to advance justice and not to thwart it. As stated earlier, the Workmen's Compensation Insurance had been taken by the employer - insured and this policy has been given by the petitioner - insurance company to the insured with clear understanding and open eyes that in the eventuality of some injury and death of the workman in an accident arising out of and in the course of employment of insured, the Compensation awarded to the workman or his dependents, as the case may be, by the Workmen's Compensation Commissioner, has to be indemnified by it. Though it may be a case of

contractual obligation, but nevertheless, the contract has been entered into between the parties for the benefit of the third person, herein the workman or his dependents, as the case may be. In such cases, this court will not go by the abstract doctrine of the contractual obligations, but the object and purpose of the contract and the object and purpose of the benevolent legislation has to be kept in mind while deciding such matters. This Court sitting under Article 226 of the Constitution, and even if this contention of the lack of jurisdiction in the Workmen's Compensation Commissioner to pass the award against the petitioner - insurance company has some substance, but there being no failure of justice in the present case, the exercise of powers under the said Article is not warranted. If any reference is needed, then reference may have to the two decisions of the Honourable Supreme Court in the case of A.M. Allison vs. B.L. Sen reported in A.I.R. 1957 S.C. 227 and in the case of Balvantrai vs. M.N. Nagrashna, reported in A.I.R. 1960 S.C. 407. Even in the cases of want of jurisdiction on the part of the Tribunal or the Authority, it is not obligatory on this Court to interfere under Articles 226 or 227 of the Constitution of India. It is a fact that in almost all these cases, the petitioner - insurance company has deposited the amount of compensation awarded by the Workmen's Compensation Commissioner, to the substantial extent, either before the Commissioner or in this court and same is lying deposited in Fixed Deposit and the workman or the dependents, as the case may be, are getting interest. The petitioner - insurance company has not deposited the amount of compensation as an ex gratia, but it has a contractual obligation, as per its own case to indemnify the insured. Now after this long gap of about 12 to 13 years, if these petitions are being allowed and the award of Workmen's Compensation Commissioner is quashed and set aside against the petitioner - insurance company, then result would follow, that the Workmen's dependents, in case of death and the workman, in case of injury, have to refund amount of interest back to the company and further company will get deposited amount withdrawn and these poor persons have to start fresh proceedings against the employer for the recovery of the said amount. Can it be said to be in the interest of justice? And obvious reply would be in negative. Here it is appropriate to make reference to the decision of a Division Bench of the Kerala High Court reported in United India Fire and General Insurance Company Ltd. versus Joseph Mariam, 1979 ACJ 349, where it was held the only circumstances under which the liability of the employer to compensate an employee could be enforced against insurer were those

specified in section 14(1) of the Act, 1923, and where such conditions are not satisfied, the Commissioner for Workmen's Compensation could not issue any direction to the insurer. But still the Court declined to grant any relief to the insurer since the amount of compensation had been deposited by it in the court. This court sitting under Article 226 of the Constitution of India to advance the interest of justice and not to thwart the same. More so, the Workmen's Compensation Insurance has been taken by the employer in these cases, no injustice would cause to the petitioner - insurance company where this Court declines to interfere in these matters. The Apex Court in the case of State of Maharashtra and ors. versus Prabhu, reported in 1994 (2) SCC 481 held that there is a distinction between the writs issued as a mater of right such as habeas corpus and those issued in exercise of discretion such as certiorari and mandamus. The Court has further held that the High Court exercises control over the Government functioning and ensure obedience and rule by enforcing proper, fair and just performance of duty. Where the Government or any authority passes the order which is contrary to the rules or law, it becomes amenable to correction by the court in exercise of its jurisdiction. But one of the principle inherent in it is that the exercise of power should be for the sake of justice. One of the yardstick for it is, if the quashing of the order results in the greater hardship of the society then the court may restrain from exercising the power. The Act, 1923 is a socio-economic legislation and interference if made in the present cases by this Court only on the ground of lack of jurisdiction, alleged by the petitioner - insurance company, then certainly the exercise of power would not be for the sake of justice. The petitioner - insurance company in these cases failed to satisfy the conscience of this court how and on what grounds its obligations under Workmen's Compensation Insurance to indemnify the insured for the amount of the compensation awarded to the workman or his dependents stand discharged. The petitioner - insurance company has taken the premium from the insured to ensure him that in the eventuality of liability comes on him for the payment of compensation to the workman or his dependents, as the case may be, for the injury or the death of workman in an accident arising out of and in the course of employment, it will indemnify the same. It has to stand to that assurance and not to raise all these technical defences to resile from its obligations. The insurance company is not an ordinary businessman or a trader, but it is a nationalised company, and a state, or an agency or an instrumentality of the state within the meaning of Article 12 of the Constitution. The Workmen's

Compensation Insurance, as stated earlier, has taken to fulfil the object of socio-economic legislation then certainly it is a case where the petitioner - insurance company should have been impleaded as a party and should have taken all the opportunity to raise its defence on merits and to pay the amount of compensation, awarded by the Workmen's Compensation Commissioner in favour of the workman or the dependents, as the case may be. It is not the object and purpose for which the insurance company has been there to defend all the just claim of the workmen or their dependents of compensation for the injury or the death in an accident arising out of and in course of employment. So in view of the facts, as stated above, the petitioner insurance company has no case whatsoever on merits as well as otherwise also it is not a fit case where this court should interfere in these matters under Article 226 of the Constitution of India.

32. Now I may advert to consider the other submission made by the petitioner insurance company in the written submissions that the Workmen's Compensation Commissioner has no jurisdiction to pass the order for payment of interest and penalty against the insurance company under section 4A of the Act, 1923.

Section 4A of the Act, 1923 provides that the compensation under section 4 shall be paid as soon as it falls due. This section puts further obligation on the employer for payment of provisional payment based on the event of the liability which he accepts in case where whole of the liability of compensation is disputed by him. This payment has to be made by way of deposit of the amount in the office of the Workmen's Compensation Commissioner or to pay to the workman. But in case of default made in paying the compensation due under the Act, 1923, within one month from the date it fell due, the Commissioner may direct that in addition to the amount of arrears, simple interest at the rate of 6 % p.a. on the amount due together with, if in the opinion of the Commissioner there is no justification for the delay, further sum not exceeding 50% of such amount shall be ordered to be paid by the employer by way of penalty.

The contention of the petitioner - insurance company is that the liability for the payment of the interest and the penalty could have been only of the employer and not of the insurance - company. The insurance company is not an employer and therefore, it cannot be treated at par with the employer.

33. In Special C.A. No.4047/83 neither interest nor

the penalty has been awarded in favour of the claimant workman. In Sp.C.A. No.3624/83, only interest has been awarded @ 6% p.a. from 17.12.1981. In Sp.C.A. No.5929/83 again only interest has been awarded at the rate of 6 % p.a. from the date of filing of the claim petition till the realisation. In Special Civil Application No.6562/84 the interest at the rate of 6 % p.a. and penalty at the rate of 25 % of the amount of compensation has been ordered. Similarly in Special Civil Application No.1879/88, the interest at the rate of 9 % and penalty at the rate of 50 % of the amount of compensation awarded, has been ordered.

34. There appears to be divergence of opinion on the issue whether insurance company can be fastened with the liability to indemnify for the penalty and interest awarded by the Workmen's Compensation Commissioner to the workman under section 4A of the Act, 1923. First in series the reference is to be made to the decision of the M.P. High Court in the case of Om Prakash versus Ramkal and others, 1987 ACJ 803. In the appeal under section 30 of the Act, 1923 the legality was in issue of a part of the award, absolving the insurer and saddling on the employer liability for payment of penalty and interest under section 4A of the said Act. The Court held;

"The insurance policy does not restrict liability of the insurer under the Act, 1923 by excluding explicitly other liabilities arising under that Act and limiting risk only to the liability in respect of payment of 'compensation'. In other words, it does not say that the insurer shall not be liable for the award that may be passed for "penalty" or even 'interest' under section 4A(3) of the Act, 1923. This view I have to take reading the proviso in the context of para 1 of the policy wherein the obligation of the insurer to indemnify the insured is specified and it is "against all sums including claimant's costs and expenses which insured legally becomes liable to pay." The obvious need not be stressed that the liability of the 'employer' or for that matter, of the 'insurer' as regards 'penalty' and 'interest' under section 4A(3) of the Act, 1923 is evidently a 'liability' under the Act 1923 and when an award is passed by the Commissioner under section 4A(3), the 'employer' and for that matter the 'insurer' becomes 'legally' liable to pay that in terms of para no.1 of the policy, the obligation of the insurer to indemnify the employer in respect of such a liability ensues

under the policy itself."

In the case of Oriental Fire and General Ins. Co. Ltd. versus Matias Burla and another, 1986 ACJ 732. the Orissa High Court in para no.7 of the judgment held,

"A bare glance of section 4A(3) is enough to show that it can be invoked against an employer. The use of the words, 'employer' in this provision as distinct from the phrase 'any person' in section 31 of the Act, which deals with recovery of the compensation, also further confirms the view that the provision can be invoked against an employer. Being a penal provision, it is to be construed rigidly. The insurer, who takes the liability to indemnify the employer, is not the employer. On this short ground only, the contention of Mr. Basu that the interest claimed and penalty imposed on the insurer is unauthorised, becomes unassailable."

The High Court of Karnataka in the case of Oriental Insurance Company Ltd. versus Jevaramma and others, 1988 ACJ 671 while dealing with the issue of liability of the insurance company of payment of penalty ordered under section 4A(3) of the held,

"there is another important question to be considered in this case. It is, whether the insurer is liable to pay penalty when the insurance policy is taken to cover specifically and only the risk of injury or death of the injured, on careful examination, we are of the opinion that the insurance company is liable to meet only the compensation payable for the risk covered and not the penalty unless the terms of the policy specifically include payment of penalty also. Penalty is not a necessary part of compensation. Compensation is pecuniary damages payable in respect of the damage or injury caused including death. But penalty is material reparation payable for breach of duty to pay the compensation within the statutory period prescribed under the Act. Penalty is distinctly different from compensation. In the instant case, we find that there is no specific term or condition in the insurance policy which binds the insurance company to pay penalty apart from compensation. We are of the opinion that the insurance company is not liable to pay the

penalty in the instant case.:

The Delhi High Court in case of Oriental Insurance Co. Ltd. vs. Hasmat Khatoon and others, 1989 ACJ 862 observed,

"Section 3 of the Act, 1923 makes it mandatory for the employer to pay compensation in accordance with the Act, if personal injury is caused to a workman by accident arising out of and in course of his employment. In other words, the liability of the employer is not required to be proved if the two conditions mentioned in section 3(1) are satisfied. The amount of compensation payable is prescribed by section 4 and schedule-I. Thus, the Act does not require that the quantum of compensation should be worked out on the basis of the evidence. Reading sections 3 and 4 of the Act together it is clear that this is a category of liability in the nature of absolute liability created by the statute. The object of these mandatory provisions is clear. The workmen are exposed to dangers of life with increased industrialisation. A victim of an industrial accident cannot be subjected to the civil trials under the law of torts. The victim needs quick, cheap and effective machinery for immediate relief both in case of death or bodily injury. To make these provisions more effective section 4A provides that compensation shall be paid as soon as it falls due. An employer is liable to make a provisional payment even if he does not accept the liability. The compensation has to be paid within one month from the date it fell due. If the employer is in default, the Commissioner may direct simple interest at 6 per cent per annum to be paid over and above the compensation. If delay over and above one month is caused by the employer in making the payment of compensation, and there is no justification for the delay, the Commissioner is empowered to impose a penalty in the sum not exceeding 50 per cent of the compensation amount. The compensation received under the Act is not liable to any assessment, charge or attachment. The amount awarded under the Act is recoverable as arrears of land revenue. The Act prohibits any contract or agreement whereby the workman relinquishes any right of compensation from the employer for

personal injury in so far as it purports to remove or reduce the liability of any person to pay compensation under the Act. Any such contract is null and void under section 17 of the Act. Thus, it may be seen that although the genesis of the liability under the Workmen's Compensation Act is in the law of Torts, very substantial and novel improvement are made by the various provisions stated above in regard to statutory liability created by the Act.

On the other hand, the provisions of the Motor Vehicles Act in regard to insurance of the vehicles for the benefit of third party, for passengers, for the employees and for damage to property/ vehicle are mostly in realm of contract, except where the liability is created by sections 95 and 96 of the Motor Vehicles Act. Even there the principles recognised is that of the minimum liability created by the statute which cannot be contracted out. But, beyond the principal liability the matter is left to the contract between the insurance company and the owner of the vehicle. Liability of the insurance company is regulated by section 96 which purports to lay down that the insurance company will answer the liability under the judgment pronounced against the owner/ wrong doer. The liability of the owner of the vehicle is required to be established by means of evidence, oral and circumstantial. The Court/ Motor Accidents Claims Tribunal is required to work out as to what is just compensation in a given case depending on the monetary loss caused to the dependents due to the death or injury caused to the victim. The liability of the insurance company can be limited either by the statute or by the contract of insurance. The amount of compensation is recoverable by the normal process of law. There is no concept nor provision of making payment within a statutory period and imposition of penalty for not making the payment within the statutory period. The concept of liability in an industrial accident is, thus, quite different from the normal concept of accident caused by the motor vehicles.

There is only one area creating overlapping fields of liability. An insurance policy can cover liability arising under Workmen's Compensation Act, 1923, in respect of

death or bodily injury to any employee engaged in driving the vehicle or being carried in the vehicle. If the goods vehicle is carrying not exceeding six employees, the liability of the insurance company for any one accident can be limited upto Rs.50,000/-, "including the liabilities, if any, arising under the Workmen's Compensation Act, 1923." These two cases of overlapping are mentioned in section 95 of the Act. Thus, considering the scheme and scope of the relevant provisions of the two enactments it is evident that it is the normal compensation payable in case of death or bodily injury to an employee, which is subject to the provisions of the statute or contract as mentioned in section 95. The provision for special interest or penalty under the Workmen's Compensation Act, 1923 has an entirely different setting and purpose unknown to normal insurance law embodied in the contract between the parties. Limits of liability in certain cases can be limited by a contract between the parties under the Motor Vehicles Act, but any such contract is null and void under the Workmen's Compensation Act. In view of the divergent setting and the provisions under the said enactments, the word 'liability' occurring in section 95 in the context of Workmen's Compensation Act has to be understood only as normal compensation and not to include special interest and penalty awarded under sec.4A of the Workmen's Compensation Act.

The construction of the two sections commented by me is apparently supported by Oriental Fire and Gen. Ins. Co. Ltd. vs. Matias Burla, 1986 ACJ 732 (Orissa) and 1988 ACJ 677; Sic Oriental Ins. Co. Ltd. vs. Jevaramma, 1988 ACJ 671 (Karnataka). However, a discordant view is taken by the Single Judge of Madhya Pradesh High Court in Om Prakash vs. Ramkali, 1987 ACJ 803 (MP). The learned Judge has held that the word liability used in section 95 of M.V. Act, covers liability to pay special interest and penalty and if the insurance company wants to avoid such liability, it should provide for such a term in the contract of insurance. The burden is on the insurance company to show that it has not taken upon itself the liability to pay special interest and penalty. the learned Judge has referred to and distinguished several decisions of Madhya Pradesh High Court and other

High Courts. However, with respect, it has to be noted that the learned Judge has not analysed the nature of liability and the kinds of liability under Motor Vehicles Act and the Workmen's Compensation Act. So also, the object and the machinery for mandatory payment of statutory amount under Workmen's Compensation Act has not been brought to the notice of the learned Judge.

When the Workmen's Compensation Act has expressly provided for an exhaustive remedy of recovery of compensation by way of arrears of land revenue; when the Workmen's Compensation Act has expressly exempted the compensation amount from being assigned or being subjected to any charge; when the minimum compensation is assured by the statute itself: I do not find any necessity of very widely interpreting the word 'liability' in section 95, as done by the learned Judge. Casting a negative burden on the insurance company and to exclude itself from liability to pay interest and penalty is not warranted by the provisions of insurance of vehicles under Motor Vehicles Act or under the general law of insurance. With respect, I am not persuaded by the reasoning of the learned Judge, reported in Om Prakash versus Ramkali, 1987 ACJ 803 (M.P.).

For reasons stated above, I hold that an insurance company is not liable to pay interest and penalty under section 4A(3). Its liability is only to pay compensation.

But, even assuming that an insurance company which liable to pay interest as well as penalty, the requirements of section 4A itself would show that the obligation imposed by that section can be answered only the employer. The compensation under the said section has to be paid as soon as it falls due. The date when the payment has become due can be known only by the owner/ employer because he alone would know the date of accident causing death or injury. Since he would alone know the date when the amount is payable, he would also be only person who would know that within one month from the due date compensation must be paid. He is liable to pay simple interest at the rate of 6 per cent per annum on the delay, but if he fails to show justification for delay, penalty shall be recovered from the employer. Thus, if the employer wants to avoid penalty, he must show

justification for the delay. Since the causes and justification for the delay are within the knowledge of the employer, nobody else can provide a justification for the delay. The provisions of section 4A of Workmen's Compensation Act being mandatory and being made with specific object of industrial security, they will prevail over the provisions of the Motor Vehicles Act.

On the facts of this case, the insurance company can, by no stretch of imagination, be held to be liable to pay the interest and penalty as awarded by the Commissioner. The insurance company got knowledge of the accident which had taken place on 21.5.85 only on 26.8.85. They did not know as to when payment of compensation had fallen due. They did not know when one month would elapse. Thus, they had a valid justification for not making the payment within one month from the date of the accident. As soon as the insurance company got the information they deposited the compensation amount, as required by the Workmen's Compensation Act.

In the case of New India Assurance Co. Ltd. versus Bhukan and others, 1989 ACJ 923, the Madhya Pradesh High Court while dealing with the two contentions raised by the insurance company, (i) in view of the provisions of 19 of the Act the claimant should have preferred their claims petition before the Motor Accidents Claims Tribunal and not before the Commissioner for Workmen's Compensation, (ii) the insurer is not liable to pay penalty, held;

"No doubt, two independent Tribunals are there, viz. Motor Vehicles Accidents Claims Tribunal under the Motor Vehicles Act, 1939 and the Commissioner of Workmen's Compensation under the Workemen's Compensation Commissioner Act, 1923, and both of them have concurrent jurisdiction with regard to claims for compensation.

In a case where the claimant employed in a motor vehicle sustains injuries in course of the employment due to accident of the vehicle concerned and the vehicle happens to be insured, in such circumstances the application for compensation can be presented either before the Motor Accidents Claims Tribunal under the Motor

Vehicles Act or before the Commissioner under the Act of 1923, however, the option lies with the claimant only to approach any of the two forums.

Section 19 of the Workmen's Compensation Act, 1923 only bars jurisdiction of the civil court and not the Tribunal. This being so, the contention raised by the learned counsel for the company as to the jurisdiction of the Commissioner has no force and is hereby repelled.

As far as the second ground is concerned, in accidents of Motor Vehicle the liability to pay compensation is upon the owner of the vehicle but where the vehicle is insured it is for the insurer to make good the compensation awarded in accordance with the terms and conditions of the policy. The said liability of the insured is covered under the provisions of section 96 of the Motor Vehicles Act. Therefore, if the liability of the insurer arises for the principal amount and the same is not deposited or paid well in time within the meaning of provisions of section 4A(3) of the Act, 1923, i.e. within a month from the date of intimation, the insurer incurs liability to pay penalty.

In the instant case the accident occurred on 26.8.1980 and immediately thereafter the insurance company was informed by the insured and the same has been acknowledged by the insurance company. But the insurer has not deposited the amount within a month thereof, therefore, the learned Commissioner has rightly imposed penalty as per the provisions of section 4A(3) of the Workmen's Compensation Act, 1923.

The Division Bench of this Court while dealing with the similar question in the case of Gautam Transport, Bhavnagar vs. Jiluben Huseinbhai and others, 1989 ACJ 587, held;

"Mr.Damani tried to refer to section 95 of the Motor Vehicles Act for substantiating his argument that the insurance company would be responsible for indemnifying the insured for the liability under the Workmen's Compensation Act as well. The provision would not be relevant for the purpose of this matter and even if we were to hold that for determining the conditions of the policy section 95 of the Motor Vehicles Act can

be looked into, then also the clear fact that the contract of insurance is a contract of indemnity cannot be lost sight of.

The insurance company while issuing an insurance policy only assures that it shall indemnify the assured for all liability which might be springing from the type of risk covered by the insurance policy issued by it. The liability for the penalty arises an account of clear violation of the statutory provisions of the Workmen's Compensation Act and the insurance company cannot be saddled with the responsibility of indemnifying the assured if the assured acts in clear violation of a statutory requirement. The contract of indemnify also necessarily postulates that the person indemnified has to in a way in which damages are mitigated. If by his negligence he incurs an additional responsibility for having violated a statutory requirement, then the insurance company cannot be asked to indemnify the assured on that score. If such a view were to be taken, it would give a blanket licence to assured for violating the statutory requirement and in some unforeseen cases, it might even lead us to a situation where the assured and the claimant may join hands to fleece the indemnifier, i.e. the insurance company of a sizeable amount. Such could never be the intention of the provision in Workmen's Compensation Act or the Motor Vehicles Act, os far as the insurance policy, viz. the contract of indemnity is concerned. Under the circumstances, we do not find any substance in the present appeal which requires to be dismissed at admission stage. Though it is not relevant, it may be stated that one of us (Gheewala, J.), while deciding First Appeal No.349 of 1983, by an order dated 12.8.1983 had taken the same view, viz., that for the amount of penalty the insurance company cannot be held responsible. We do not see any reason to deviate from that view because there is no reason to comment for such deviation, rather there is every thing in the statute to support the same."

The Rajasthan High Court in the case of United India Insurance Company Ltd. versus Roop Kanwar, 1991 ACJ 74, dealing with the liability of the insurance company to indemnify the insured against his liability of

interest and penalty as awarded under section 4A(3) of the Act, 1923 in para no.17 of the judgment held ;

"The last question for consideration is whether the appellant is not liable to pay the interest and penalty. The above-quoted endorsement No.16 clearly shows that the appellant in consideration of payment of additional premium agreed to indemnify the insured employer against any liabilities under the Workmen's Compensation Act, 1923. Admittedly, the amounts of penalty and interest have been levied by the Commissioner under section 4A(3) of the Act, 1923.

... ...
... ...

Thus, the Commissioner rightly made the appellant liable to pay the amounts of interest and penalty. In Gautam Transport vs. Jiluben Huseinbhai, 1989 ACJ 587 (Gujarat), the insurance company had no endorsement like above - noted endorsement no.16."

In Madan Gopal and others vs. Anandi Lal and others, 1992 ACJ 543, the Rajasthan High Court has taken the same view taken in the case of United India Insurance Company Ltd. (supra). The point relating to the liability of the insurance company to pay penalty visualised by section 4A(3) of the Workmen's Compensation Act, 1923 came up for consideration before the High Court of Orissa in Khirod Nayak vs. Commissioner for Workmen's Compensation and others, 1992 ACJ 76. The counsel appearing for the insurer contended that the amount of penalty cannot be realised for the insurance company. In this connection reliance placed on the decision of the learned Single Judge of that court in General Insurance Co. Ltd. versus Matias Burla, 1986 ACJ 732 (Orissa). As against the said decision the counsel for the petitioner - workman placed reliance on the judgment of a learned Single Judge of Madhya Pradesh High Court in New India Assurance Co. Ltd. vs. Bhukan, 1989 ACJ 923 (M.P.). Speaking for the Division Bench, B.L. Hansaria, CJ (as he then was) stated in para nos.7 and 8,

"The question for our consideration is, which of the two views merits our acceptance. According to us, the mere mention about the liability being of the employer in section 4A(3) of the Act is not enough to exonerate the insurer to indemnify

the employer in this regard in cases of accident involving a motor vehicle which requires compulsory insurance under the provisions of the Motor Vehicles Act, 1939. We have stated so because the primary liability of paying compensation is also fastened on the employer as would appear from section 3(1) of the Act. If an insurer is liable to indemnify the employer for the latter's liability to pay compensation as visualised by section 3(1) of the Act, we do not find any cogent reason to exonerate the insurer in paying the penalty fastened on the employer because what is stated in section 4A(3) of the Act. If the liability of the insurer arises fro the principal amount, though same required to be paid by the employer as stated in section 3(1) of the act, by the same token, the insurer's liability would arise to pay the penalty which is imposed on the employer because of the default in making the payment. If the employer commits the default in paying the compensation and if it was the liability of the insurer to pay compensation in time, we are of the view that for the default in making payment, the insurer is also suffer. The mere fact that section 4A(3) has spoken about 'employer' is, therefore, not enough to exonerate the insurer.

In this connection we may refer with profit to the provision of section 96 of the Motor Vehicles Act, 1939 as per which it is the duty of the insurer to satisfy Judgements against persons insured. As to the operation of section 96 of the Motor Vehicles Act is a case of present nature. We have no doubt in view of what was stated by a learned Single Judge of this Court (Misra, CJ, as he then was) in Bibhuti Bhusan vs. Dinamani Devi, 1982 ACJ 338 (Orissa). This decision dealt with the liability of the insurer arising out of a case under the provisions of the Act following death of a cleaner of a vehicle. The dependents of the deceased filed a case against the employer and also impleaded the insurance company. The Commissioner set up by the Act was approached for compensation. The question was whether the Commissioner could pass a decree against the insurance company. Referring to sections 95 and 96 of the Motor Vehicles Act, it was held that the award had to be against the insured with a declaration that the liability had to be satisfied by the

insurance company, the same view was taken in Oriental Fire and Genl. Ins. Co. Ltd. vs. Nani Bala Devi, 1987 ACJ 655 (Gauhati). So, even if the penalty be imposed on the owner of the vehicle who happens to be the employer of the concerned workman, the insurer has to indemnify the employer.

Because of all that is stated above we are satisfied that the insurer is liable to pay the penalty also, which is imposed under section 4A(3) of the Act."

Karnataka High Court in the case of Shanthamma vs. Kamalamma and another, 1993 ACJ 453 held,

"Employer's liability for compensation to employee's death or bodily injury arises under section 3 of the Act and same falls due as computed under section 4 thereof. Section 4A of the Act which refers to the compensation liable to be paid under the Act as also the amount up to 50 per cent of the compensation recoverable as the penalty from employer reads thus :

... ...
... ...

Subsection (1) and (2) of section 4A refer to the liability of compensation payable under the Act by the employer and which had fallen due thereunder. The opening words used in subsection (3) which enable the Commissioner to recover up to 50 per cent of the amount of the compensation by way of penalty from the employer, to wit, where any employer is in default in paying the compensation due under the Act, does not leave any scope for doubting that amount of compensation due under the Act is one thing and the amount recoverable in default of non payment of that compensation as penalty, as is provided for in the latter portion of that subsection, is altogether different. Therefore, the argument of the learned counsel for the appellants that the liability under the Act for which compulsory policy is taken should cover not only the amount of compensation due under the Act, but also the additional sum which could be recovered by way of penalty from the employer for reason of his

default in paying the amount of compensation, cannot be accepted and it has to be held that the word 'liability' used with reference to the Act (Workmen's Compensation Act, 1923) in section 95 of the M.V. Act, excludes from it sum not exceeding 50 per cent which could be recovered by the Commissioner from the employer for default in payment of compensation payable under the Act by way of penalty as provided for under subsection (3) of section 4A of the Act."

The Bombay High Court and the Himachal High Court have also taken the view that the insurance company is not liable to make good to the insured for the amount of the penalty and interest as awarded by the Workmen's Compensation Commissioner under section 4A(3) of the Act, 1923 and reference in this respect may have to the decisions,

(i) Dromati Devi vs. Sohan Singh, 1995 ACJ 1019.

(ii) United India Insurance Co. Ltd. vs. Nako alias Naiku Devi and ors., 1996 ACJ 516.

(iii) Divisional Manager, United India Insurance Co. Ltd. vs. Sahab Bahadur and another, 1996 ACJ 558.

The Andhra Pradesh High Court has also taken the same view, and reference may have to the decision of that Court in the case of National Insurance Company Ltd. vs. Mohd. Mujataba Khan and another, 1993 ACJ 542. Reference can also have to two recent decisions of the Karnataka High Court in which the Court reiterated its earlier view that the Insurance Company is not liable to pay amount of penalty and interest as awarded by the Commissioner. These are the cases,

(i) Oriental Insurance Co. Ltd. vs. Raju and others, 1994 ACJ 191.

(ii) Oriental Insurance Co. Ltd. vs. Hazira Begum and others, 1995 ACJ 236.

The Rajasthan High Court, Gauhati High Court and M.P. High Court also in their later decisions maintained the consistency and reiterated the view that the

insurance company is liable to indemnify the employees insured for the liability of the penalty and interest in addition to the amount of compensation awarded by the Commissioner. These are the decisions,

(i) Oriental Insurance Company Ltd. versus
Chandri and others, 1996 ACJ 03.

(ii) United India Insurance Co. Ltd. versus
L.T. Tamuly and others, 1996 ACJ 644.

(iii) New India Assurance Co. Ltd. versus
Guddi and others, 1994 ACJ 1134.

This question of penalty and interest and liability of the insurance company to pay same, again came up for consideration before the Division Bench of this Court in the case of Radhaben and others versus Mulji Kanji Dhord and others, 1994 ACJ 404, K.G. Shah, J. (as he then was) speaking for the Division Bench, stated,

"Section 4A of the W.C. Act came to be enacted by the Act No.8 of 1959 and came into force w.e.f. 1.6.1959. The concept of compulsory insurance for the liability of employer to the employee as it appears in the later part of clause (i) of the proviso to section 95 of M.V. Act came to be enacted by the Act No.100 of 1956, which came into force on February 16, 1957. Therefore, when section 4A of the W.C. Act came to be enacted, the concept of compulsory insurance covering the liability of the employer to employee as envisaged in clause (i) of proviso to section 95 of M.V. Act was on the statute book. At that time, i.e. in 1959, when section 4A of W.C. Act came to be enacted, section 96 of the M.V. Act was also on the statute book and there, by virtue of section 96 of M.V. Act, the insurance company which issued a certificate of insurance was required to step into the shoes of the judgment debtor, i.e. the insured, not in respect of the liability for main claim (for compensation), but also it was liable for the costs and interest. Now, when the legislature enacted section 4A of the W.C. Act, the new concept of penalty, being the liability of the employer, was brought in. If the legislature wanted that in respect of the Motor Accidents and the liability of the employers arising from such accidents to their employees, the insurance

company which has issued the certificate of insurance in respect of that motor vehicle, should also be made liable to indemnify the insured in respect of the penalty for which the new provision was being made by enacting section 4A in the W.C. Act, the legislature would have simultaneously amended section 96 of the M.V. Act suitably to provide the indemnity to be given by the insurer to the insured also in respect of the insured's liability for penalty payable by the insured employer to the workman or to his dependents in case of default being committed by the employer, i.e. the insured in making the payment or deposit of the compensation within the statutory period provided in section 4A of the W.C. Act. That has just not been done by the legislature. This is not enough. Even after 1959, inafter (sic) section 4A came to be introduced in the W.C. Act, the M.V. Act has been amended a number of times. It has been amended by the Act Nos.51/ 60, 58 of 1960, 25 of 1968, 56 of 1969, 26 of 1976, 27 of 1977, 47 of 1978 and 47 of 1982. By none of these amending Acts, by some of which even section 96 of the M.V. Act came to be amended, the legislature thought fit to insert in section in section 96 of the M.V. Act any provision making the insurance company liable, on part with the judgment debtor, i.e. the insured of the employer in respect of the employer's liability for penalty payable under section 4A of W.C. Act. When the aforesaid amending Acts by which the provisions of M.V. Act were amended and by some of which even the provision of section 96 of the M.V. Act came to be amended, legislature had before it, one statute book, section 4A of the W.C. Act which provided for a direction for penalty being recovered from the employer in the event of the default in payment or deposit being made by the employer. If the legislature wanted this liability of the employer for penalty to be subject matter of a compulsory insurance in case of motor vehicles, then the legislature would certainly have provided either simultaneously with the introduction of section 4A of the W.C. Act or by subsequent amendments to the M.V. Act, a suitable provision making the insurance company also liable for the penalty by the employer under section 4A of the W.C. Act. The legislature has not done anything of the sort and that clearly shows that the legislature never wanted that

under the compulsory insurance scheme, the liability of the employer for penalty payable under section 4A of W.C. Act should be covered. Therefore, even on the joint reading of sections 95 and 96 of the M.V. Act, it becomes clear therein there is no element of compulsory insurance covering the liability of the employer for penalty under section 4A of the W.C. Act. Therefore, it cannot be said that when the legislature in section 95 of the M.V. Act had spoken about the liability of the employer under the W.C. Act as being compulsorily insurable, it has also covered therein the liability of the employer to pay penalty under section 4A of the W.C. Act.

Though not strictly relevant, we may mention here that the M.V. Act which together with various amendments therein held field till recently, came to be replaced by the M.V. Act of 1988 (Act No.59 of 1988) (for short "the new M.V. Act") and instead the new M.V. Act came into force. Even in the new M.V. Act provisions similar to those found in sections 95 and 96 of the M.V. Act have been made by sections 147 and 149. But even there, the scheme has remained almost the same as it was in section 95 and 96 of the M.V. Act. What we want to emphasise is that even when M.V. Act came to be replaced wholesale and a new Act came to be enacted in its place, the legislature did not think it fit to incorporate, as compulsory insurable, the liability of the employer to the employee to pay penalty under section 4A of W.C. Act.

There is yet another angle from which the matter could be viewed. As indicated hereinabove, the liability under the W.C. Act is an absolute liability. It is no a fault liability and the liability to pay compensation. It is only when the employer commits default in paying or depositing the compensation amount within the prescribed period that the further liability attaches to pay penalty. The word 'penalty' as used in section 4A of the W.C. Act is itself suggestive of the fact that what is sought to be recovered from the employer is penalty, which would follow normally by way of penal consequences. It is with a view to penalise the defaulting employer that the concept of penalty has been introduced by section 4A of

the W.C. Act. It is for, so to say, an offence of having committed a default in paying or depositing the compensation amount within the prescribed period that the employer is sought to be penalised. The idea is that he may not repeat his default in future. Now, if the liability for such a penal consequence could be transferred upon somebody else, the whole purpose of making a penal provision would be frustrated.

We have hereinabove adverted to question whether by virtue of section 95 of the M.V. Act, the liability of the employer to the employee or his dependents to pay penalty under section 4A of the W.C. Act is required compulsorily to be covered and we find that it is not so required compulsorily to be covered."

The Division Bench in this case did not agree with the view of the Madhya Pradesh High Court in the case of Om Prakash vs. Ramkali (supra). While dealing with this decision the Division bench observed thus,

"However, our attention was drawn to the decision in the case of Om Prakash v. Ramkali, 1987 ACJ 803 (M.P.), where the learned Single Judge of Madhya Pradesh High Court has, taken a contrary view, held that the insurance company is also liable for the penalty payable by the employer under section 4A of the W.C. Act. Having read the judgment in the case of Om Prakash very minutely, with respect to the learned Single Judge of the Madhya Pradesh High Court, we find it difficult to agree with the view taken therein. Of course, in that judgment an attempt has been made to make an in depth study of the various provisions of the M.V. Act and the W.C. Act. But what appears to have weighed heavily with the learned Single Judge of the Madhya Pradesh High Court is that in the policy of insurance in that case, the insurer had not excluded its liability under section 4A of the W.C. Act and therefore, the insurance company was liable to pay the penalty also. With respect, we are not in a position to subscribe to this view of the learned Single Judge of the Madhya Pradesh High Court. Unless by statutory enactment or by a contract, the liability is included, there would never arise any question for exclusion of that liability. The liability

> for penalty on the insurance company should first be found to have been included and only then would arise the question of excluding that liability by a specific term in the insurance policy. We have hereinabove pointed out with reference to section 95 of the M.V. Act that statutorily such a liability is not compulsorily insurable in the scheme of section 95 of the M.V. Act, even though the liability to pay penalty might arise under the W.C. Act. Therefore, as statutorily such a liability cannot be said to have been covered, there would arise any question of excluding such a liability. This is one way of looking at the matter. The other way of looking at the matter is, if statutorily such liability is compulsorily coverable, then even if by the contract an exclusion clause is provided, that would be meaningless for contracting out a statutory liability would be impermissible. In that view of the matter also, the reasoning of the learned Single Judge of the Madhya Pradesh High Court, which so heavily made in the judgment, which is based on the fact that in the contract of insurance such a liability is not excluded, cannot be subscribed."

35. In view of the decision of the Division Bench of this Court in the case of Radhaben v. Muljikanji (supra), so far this Court is concerned the matter is no more res integra that unless by statutory enactment or by a contract, the liability for penalty on insurance company, as payable under section 4A of the Act, 1923 is included, the insurance company cannot be held liable for payment thereof. The statutory enactment Act, 1923 does not provide the liability, as provided under section 4A of this Act, an insurance company. Similarly, statutorily, also such a liability is not compulsorily insurable in the scheme of the Act, 1923. So question falls for consideration, in these cases, with reference to Workmen's Compensation Insurance. But it is basically a question of fact which has to be pleaded and proved before the Workmen's Compensation Commissioner. It is for the insurance company, if it really considers it to be point of any worth, to make the necessary pleadings, press for framing of the issue on this point and to prove the same by producing oral or documentary or both evidence. The Workmen's Compensation Commissioner framed in these cases many issues, but issue on the point of liability of the insurance company to pay penalty has not been framed. At no point of time, the insurance company

during pendency of these proceedings before the Workmen's Compensation Commissioner pressed for the framing of the additional issue on this point. From these facts, on which there is no dispute, it goes without say that the petitioner - insurance company has not pressed for this point before the Workmen's Compensation Commissioner. It is also not the grievance of the petitioner - insurance company in these Special Civil Applications that it prayed for framing of additional issue on this point and the Workmen's Compensation Commissioner had declined it. So this is a new plea which is sought to be raised by the petitioner - insurance company for first time before this court in these writ petitions and it cannot be permitted.

36. There is yet another angle from which the matter could be viewed. The petitioner - insurance company relies on contract and if under the contract of insurance it is not required to indemnify for the liability of penalty, awarded by the Workmen's Compensation Commissioner, to the insured, it is still open it to recover this amount from the insured. However, in these facts and circumstances of this case it is not open to the insurance company to raise this new point before this court first time and more so when there being no failure of justice in these cases to the petitioner insurance company.

37. Next comes for consideration the question of liability of the insurance company to indemnify the insured for the amount of interest. In the case of Radhaben v. Mulji Kanji Dhord (supra) this question was there for consideration before the Division Bench of this Court and this Court held the insurance company liable to indemnify the insured for the amount of interest awarded by the Workmen's Compensation Commissioner. This Court observed,

> "After having gone through this judgment, we are not in a position to subscribe to the view of the learned Single Judge of the Delhi High Court, so far as the interest part is concerned. As explained hereinabove, the liability of the insurer for interest is specifically mentioned in section 96 of the M.V. Act, along with the liability for costs. Therefore, on proper interpretation, the liability for interest should also be read in the expression 'liability' as used in section 95 of the M.V. Act. But would that not be position in respect of the penalty. As shown hereinabove, even with the various

amendments in the M.V. Act, the legislature has never thought it fit to make the liability of the employer insured to pay penalty under section 4A of the W.C. Act to the employee or to his dependents the subject matter of the compulsory insurance under section 95 of the M.V. Act. However, the liability for interest has specifically been referred to in section 96 of M.V. Act. Therefore, it is not possible for us to fall in line with the learned Single Judge of the Delhi High Court when he put the liability for interest on par with the liability for penalty. The liability for penalty and the liability for interest stand on different footings. The liability of interest is a natural corollary to the liability to make payment for compensation. The liability to pay penalty has a different setting. It has relation to the default being committed by the employer in making the payment or deposit within the period prescribed under section 4A of the W.C. Act and again the default should be without being any justification. Such is not the case qua the liability for interest. With respect to the learned Single Judge of the Delhi High Court, while agreeing with him on the question of penalty, we find it difficult to agree with him on his interpretation on the point of liability for interest. Therefore, we partially agree with the learned Single Judge of the Delhi High Court and say that for the liability of the employer for penalty under section 4A of the W.C. Act, the insurance company cannot be held responsible."

The Division Bench decided the issue of interest liability of the insurance company with reference to the sections 95 and 96 of the M.V. Act in the case aforesaid. In these cases the claims lodged by the workman or the dependents, as the case may be, do not arise from Motor Vehicles accident. As said earlier the claim become due and payable on the date of the accident and the liability of the insurance company to indemnify the insured for sum of compensation arose on the said date. Admittedly, neither the employer nor the insurance company paid or deposited the amount of compensation on that date or immediately thereafter. The poor claimants have to file their claim application before Workmen's Compensation Commissioner and those applications were contested both by the employer and insurer, which

resulted in postponement of the payment or deposit of the amount of compensation. It is not the case of the claimants also that immediately the accident was reported to the insurance company and demand of the amount of compensation was made. It is correct the claimants not lodged their claim of compensation with the insurance company. But it is a fact that the insurance company was made a party to claim application by the claimants and it came to know about the accident and claim of compensation on the day on which it received notice of the claim application from the office of Workmen's Compensation Commissioner. on that day or immediately thereafter the Compensation claimed or provisional amount of compensation which insurance company considered to be payable to the claimant, should have paid or deposited in the office of the Workmen's Compensation Commissioner. It was not done by the insurance company. The claimants though were entitled for the compensation but could not get the same for the years and the insurance company is equally responsible for the deferment thereof. Under section 4A of the Act, 1923, it is provided that the compensation under section 4 shall be paid as soon as it falls due. Under subsection (2) of this section, a duty is cast upon employer, who does not accept the liability for compensation to the extent claimed, to make provisional payment based on the extent of liability which he accepts and to deposit such amount with the Commissioner or to make such payment to the Workman or the dependents as the case may be, and such deposit or payment shall be without prejudice to the workman's right to make a further claim. Section 4A (3) of the Act, 1923 provides for a direction about simple interest at the rate of 6 per cent p.a. Subsection 3 of the Section 4A of the Act, 1923 empowers the Workmen's Compensation Commissioner to award the interest, in favour of the workman or the claimants dependents, in the award/ judgment/ order at stipulated rate where the compensation or where the liability is not accepted to the extent, to the extent it is accepted not paid or deposited with the Workmen's Compensation Commissioner in time as provided. It has been decided in the earlier part of this judgment that the Workmen's Compensation Commissioner can pass the award/ judgment or order for payment of the compensation against the insurance company, where there the Workmen's Compensation Insurance Policy is taken in that case by the employer for his employees. The insurance company cannot take exception of its liability to pay interest on the amount of compensation in a case where it failed to pay or deposit the same after it has come to know about the claim of the workman or dependents, as the case may be, under the Act, 1923. Till it came to know about the

claim of the Compensation of the workman or the dependents the delay in payment thereof may not be attributable to the insurance company. But thereafter it has no justification to withhold the payment amount of the compensation to workman or dependents, as the case may be. It is a no fault liability and in such cases much need not be gone into by the Workmen's Compensation Commissioner. The points for determination by the Workmen's Compensation Commissioner in such matters are very very limited. The interest in these matters is awarded in favour of the workman or the dependents for delay made in payment of the amount of the compensation and section 4A of the Act, 1923 vests this power in Workmen's Compensation Commissioner. In view of the facts of these cases, the provisions of the section 4A of the Act, 1923 and position of law as discussed by the Division Bench of this Court in the case of Radhaben (supra), the insurance company cannot take any exception to the award of the interest in these matters in favour of the claimants by the Workmen's Compensation Commissioner.

38. The Workmen's Compensation Commissioner as well as this court is helpless in awarding the rate of interest more than 6 % p.a. because there is specific provision in section 4A(3) of the Act, 1923, that maximum rate of interest shall not exceed 6 % p.a. In the cases of Motor Vehicles Accidents Claims the judicial trend to award interest at the rate of 12 per cent per annum or even at the little higher rate keeping in view the prevalent rate of interest of nationalised Banks and other financial institutions. Though prevalent rate of interest of nationalised banks and other financial institutions are sufficiently high and the Workmen's Compensation Commissioner and this court may be of the view that substantial higher rate of interest should be awarded, it is precluded from doing so in view of the inhibition incorporated in section 4A(3) of the Act, 1923, prescribing the maximum rate of interest at 6 per cent per annum. Section 4A of the Act, 1923 came to be inserted by way of an amendment by Act No.8 of 1959. At that point of time, i.e. 1959, this rate of interest prescribed by the legislature may be reasonable and in consonance with the then prevalent rate of interest of Banks and other financial institutions. But for all the times to come this rate of interest prescribed by the legislature in year 1959 may not stand to the test of rationality and reasonability and particularly in view of the fact that the rate of interest of banks and other public institutions has also gone very high during this period. In view of the present rate of interest of banks

and market rate as well as the judicial trend and also prevailing socio economic conditions, it is felt that the rate of interest prescribed in section 4A(3) of the Act at the rate of 6 % p.a. needs revision soon. However, it is for the Parliament to make provisions for immediate and adequate relief to the victims of employment accidents and injuries. It would not be out of place to mention that lesser rate interest would, at times, tempt the employer master to delay the payment of compensation payable under the Act, 1923. The money, compensation, which was legitimately due to the employee or the dependents has been utilised by the employer in its business. Had the employer instead of using the money of employee or dependents, obtained the said amount of loan from a bank, he would have had to pay interest thereon at the bank rate then prevailing. A lending institution like a bank would normally have advanced money for the purposes of business at the bank rate which is fixed with periodical rest. In addition thereto, a bank would normally also obtain a collateral security so as to safeguard the loan advanced by it. Under these circumstances, there is no reason as to why the employer should not be required to pay at least that rate of interest, and on such terms, as it would have to pay to a bank if that amount of money had been obtained by it on loan. But because of prescription of 6 per cent per annum maximum rate of interest to be awarded under section 4A(3) of the Act, 1923 the Workmen's Compensation Commissioner or this court cannot grant interest at the rate exceeding the rate prescribed under the aforesaid section. The poor victims of employment accident or injuries suffer doubly losses, viz. they do not get immediately the amount of compensation and for delayed payment thereof they would have has compensated by a low rate of interest. At times, it is found that big amount of compensation payable under the Act, 1923 is not paid by the employer, as and when it fell due, to the victim of employment accident or injury for variety of reasons and one of them may be poor rate of interest on the amount of compensation payable under the aforesaid act. This is yet another angle from which matter could be viewed by the competent legislature.

39. Earlier this court as well as other High Courts expressed hope that the competent authority will reconsider and revise the rate of interest on the compensation under section 4A(3) of the Act, 1923. It is hoped that the voice which was earlier raised and is raised here will not be a cry in the wilderness.

40. Before parting with the judgment, I felt it my

duty to point out yet another field of the Act, 1923, which may need attention of the competent legislature to consider socio economic aspect of this Act with reference to the amendments made in the Act, 1939, now replaced Act, 1988. The Act, 1923, is a socio economic beneficial piece of legislation. For a free India, the Act 1923, is a basic requirement of its welfare policies, as in a welfare State, the protection afforded to a disabled workman cannot be allowed to rest on the mercy or grace of the employer by way of continuing the workman in service. Section 3 of the Act, 1923 puts liability for compensation on the employer if personal injury is caused to the workman/ employee by an accident arising out of and in the course of his employment. Even the personal injury is sustained by the employee due to his own negligence, but if it is result of an accident arising out of and in course of his employment, the employer is liable for the compensation payable to him under the Act, 1923. The Motor Vehicles Act, 1939 and now the Act, 1988 casts statutory obligation upon the employer to take the insurance policy for the Motor Vehicle, and risk of the workmen is compensation liability be covered thereunder. So far the personal injury caused to the employee in a motor vehicle accident he can go for compensation under the provisions of the M.V. Act before the Motor Vehicles Accidents Claims Tribunal or he has option also to go before the Workmen's Compensation Commissioner under the Act, 1923. The difference lies in, where in case he approaches to the Motor Vehicles Accidents Claims Tribunal for compensation, he has to establish that the accident was as a result of rash and negligent driving of the driver of the vehicle of his master or as the case may be, of the driver of the other vehicle, which has collided with the vehicle he was there or both of drivers. In case, where he goes for the compensation under the Act, 1923 before the Workmen's Compensation Commissioner, for the entitlement of the compensation, he has to establish that the injury caused to him in an accident arising out of and in the course of his employment. However, the object of both the Acts, M.V. Act and Act 1923, is to provide compensation to the employee. The Motor Vehicles Act, 1939 was amended by the Act No.47 of 1982 and Chapter No.VII-A was inserted. Inserted section 92A provides for the liability without fault in certain cases. Section 92A provides that where the death or permanent disablement to any person has resulted from an accident arising out of the use of the motor vehicle or motor vehicles, the owner of the vehicle shall or as the case may be, the owners of the vehicles shall jointly and severally be liable to pay compensation in respect of such death or disablement in accordance

with the provisions as contained in the said section. The amount of compensation which shall be payable in respect of any person shall be a fixed sum of Rs.15,000/- and the amount of compensation payable in respect of permanent disablement of any person shall be a fixed sum of Rs.7500/-/-. for the entitlement of the aforesaid sum of compensation, the claimant is not required to plead and establish that the death or the permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or the owners of the vehicle or the vehicles concerned or of any other person. It has further been provided that the claim for compensation under the said provision shall not be defeated for reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of share of such person in the responsibility of such death or permanent disablement. Section 92B provides that to claim compensation under section 92A in respect of death or permanent disablement of any person shall be in addition to any other right to claim compensation in respect thereof under any other provision of this act or any other law for the time being in force. The legislation has further provided that the claim for compensation under section 92A in respect of death or permanent disablement of any person shall be disposed of as expeditiously as possible and where compensation is claimed in respect of death or permanent disablement under section 92A and also in pursuance of any right of principle of fault, the claim for compensation under section 92A shall be disposed of in the first place. The Act, 1988 has not made any change in the provisions as contained in section 92A except that the quantum of amount of the no - fault compensation has been increased from Rs.15,000/- to Rs.25,000/- in case of death, and Rs.12,000/- instead of Rs.7500/- in case of permanent disablement. The object and purpose of inserting section 92A in the M.V. Act, 1939 and section 140 in the Act, 1988, is clear that the person who sustained injury or in case of death, his legal dependents, in the motor vehicle accident should get immediate financial assistance. In both the cases, death or permanent disablement, the Act has put an obligation on the employer to provide immediate financial help to the person or his dependents, as the case may be without waiting for the final adjudication of the claim made for compensation. It is no more res integra that under section 92A and now section 140 of the M.V. Act, the insurance company, where the vehicle or vehicles are insured, is liable for

the payment of the compensation.

The Act, 1923, as stated earlier is a benevolent socio economic legislation. The workmen - employees who are in the employment have been provided for the compensation from the employer if injury or death of the workman caused by an accident arising out of and in the course of his employment. So in case of injury or death of a workman by an accident arising out of and in course his employment, under the Act, 1923 the workman or his dependents, as the case may be, are entitled for the compensation as per the entitlement provided thereunder. Though the object and purpose is to provide the compensation to the workman - employee or the dependents for the injury by the accident arising out of and in the course of his employment, but in the Act, 1923, it is not specifically provided for taking of the Workmen's Compensation Insurance by the employer. There is statutory obligation on the owner of the vehicle to take compulsorily the insurance of his vehicle. The object and purpose of both the Acts, viz. M.V. Act and the Act, 1923, to the extent of providing compensation, is to provide financial assistance to the employee who has sustained the injury or to his dependents in case of his death in an accident. But under the Act, 1923, statutorily liability has not been put on the employer to take the Workmen's Compensation Insurance. For want of specific provision of statutory Workmen's Compensation Insurance in the Act, 1923, time and again there is a debate in the courts of law regarding the liability of the insurance company for payment of compensation directly to the employee or his dependents, as the case may be, even in the case where the employer has taken the Workmen's Compensation Insurance. The High Courts have taken different views. Some of High Courts have taken the view that the Workmen's Compensation Commissioner has no jurisdiction to pass the award against the insurance company even in a case where workmen compensation insurance has been taken by the employer, except in the cases which fall under section 14 of the Act, 1923. Other High Courts and I have taken the view in this judgment that having regard to the scheme of the Act, 1923, the Workmen's Compensation Commissioner has jurisdiction to pass the award against the insurance company in a case where the Workmen's Compensation Insurance has been taken by the employer. This Court can interpret a provision of a statute but it cannot legislate a statute, which is exclusively in the sphere of the concerned legislature. Many High Courts while holding that under the Act, 1923, no award can be passed against the insurance company even in a case where the

workmen's compensation policy has been taken by the employer, observed that the Act, 1923 may need an amendment to overcome this difficulty. This Court can only observe and suggest that the time has come which needs the attention of the concerned legislature to make the necessary amendment in the Act, 1923 to enact therein compulsorily workmen's compensation insurance and a provision analogous to the provision of section 140 of the M.V. Act, 1988. Then only the Act, 1923 would have been a real and effective benevolent - socio economic statute. There are cases where by the time the compensation cases under the Act, 1923 are decided, the employer may not be in a financial position to pay the amount of compensation awarded. The Workmen's Compensation insurance is being taken so that the employer may feel safe and the employee has a security in case where injury has been caused him in an accident arising out of and in the course of his employment. The legislature has taken the care so far the M.V. Act, 1939 (now Act, 1988) is concerned. Section 92A has been inserted in M.V. Act, 1939, now section 140 of the M.V. Act, 1988, but similar amendment has not been made in the act, 1923. As stated earlier, in same employment, these two classes of employees, one who has sustained injury in an accident while he is working for the employer in his vehicle and the other who received injury in an accident arising out of and in course of his employment in the employer's factory or establishment. In both these cases the employer is common, i.e. one and the same person and is a case of employment injury except difference is that in one case injury in employment in a vehicle accident and in other case injury in an accident arising out of and in course of his employment. In former case immediate financial assistance is available to the employee or his dependents, as the case may be, under the provisions of section 92A of the Act, 1939, and now section 140 of the Act, 1988, where he or his dependents have lodged a claim of compensation before the Motor Accidents Claim Tribunal under the M.V. Act. But in the later case that immediate financial help is not available though the employee or the dependents, as the case may be, the claim of compensation this case also been lodged before Workmen's Compensation Commissioner. The compensation for no - fault liability under section 140 of the M.V. Act, 1988 is respective of the fact whether ultimately the employee or his dependents, in case of death, succeed in the claim case or not. So in all the cases of employment accident arising out of the vehicle accident the concerned employee, in case of injury and the dependents in case of his death, shall be entitled for no fault compensation by way of interim compensation

to the tune of Rs.12,000/- and Rs.25,000/as the case may be. But for want of similar provision in the Act, 1923 no fault compensation is not available to the employee or his dependents in respect of the injury in an accident arising out of and in the course of his employment. So to certain extent, it may be case of hostile discrimination without there being any nexus with the object sought to be achieved. But as stated earlier, this Court can only observe and bring to the notice of the legislature this shortcoming in the Act, 1923 and cannot issue a writ of mandamus to legislature to enact in the Act, 1923 a provision of the nature as contained in section 140 of the M.V. Act, 1988. However, this court can suggest the necessity of the amendment in a statute, but it is ultimately for the legislature to decide whether the amendment has to be made or not. The Act, 1923 is a central legislation and I can do no better in this case than to direct the registry of this court to send a copy of this judgment to the concerned Ministry at New Delhi, with all the hopes that the voice is raised here will not be a cry in the wilderness.

In the result these Special Civil Applications fail and same are dismissed. Rule is discharged in all the Special Civil Applications. Interim relief granted in these Special Civil Applications stands vacated. The petitioner - insurance company is directed to pay Rs.1000/- in each petition as a cost of the Special Civil Application to the claimant/ claimants respondent only.

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